

SEVENTY-FIFTH DAY
(Friday, May 24, 1991)

The Senate met at 10:00 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brooks, Brown, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Johnson, Krier, Leedom, Lucio, Lyon, Moncrief, Montford, Parker, Ratliff, Rosson, Sibley, Sims, Tejeda, Truan, Turner, Whitmire, Zaffirini.

A quorum was announced present.

Pastor James Bennett, St. Martin's Lutheran Church, Austin, offered the invocation as follows:

O good and gracious God, who alone is the kingdom, the power and the glory, yet who has ordained human government for the order and welfare of humanity:

Grant and continue to give us wisdom and stature. Endow all members of government, and especially this Senate, with a right understanding, a pure purpose and sound speech; enable us to rise above all self-seeking and party zeal into the larger sentiments of public good and human brotherhood. Purge our political life of every evil; make us love fair dealing and peace. Inspire us with calmness and self-restraint and the endeavor to the doing of Your will throughout this State, through Jesus Christ our Lord. Amen.

On motion of Senator Brooks and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

MESSAGE FROM THE HOUSE

House Chamber
May 24, 1991

HONORABLE BOB BULLOCK
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

H.B. 4, Relating to the offenses of driving while intoxicated and involuntary manslaughter involving the use of a motor vehicle and to the civil and criminal consequences of those offenses, including the suspension of a driver's license or driving privileges.

H.B. 121, Relating to the liability for certain persons who provide shelter for the homeless.

H.B. 237, Relating to filling a vacancy on the governing body of a municipality with a population of 1.5 million or more.

H.B. 442, Relating to compensatory education funds.

H.B. 642, Relating to the disclosure by a judge of certain special relationships with parties or attorneys.

H.B. 1974, Relating to the disposal of out-of-state solid waste in landfills in this state.

The House has refused to concur in Senate amendments to **H.B. 2004** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. The following have been appointed on the part of the House: Glaze, Chair; Harris, Rodriguez, Hirschi, Rabuck.

The House has refused to concur in Senate amendments to **H.B. 1679** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. The following have been appointed on the part of the House: Fraser, Chair; Schoolcraft, Von Dohlen, Arnold, Berlanga.

The House has refused to concur in Senate amendments to **H.B. 1367** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. The following have been appointed on the part of the House: Madla, Chair; Van de Putte, Linebarger, Vowell, Barton.

The House has refused to concur in Senate amendments to **H.B. 841** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. The following have been appointed on the part of the House: Stiles, Chair; Hightower, Russell, Granoff, Telford.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 323**: Finnell, Chair; Gibson, Robnett, Black, Stiles.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 942**: Cavazos, Chair; Counts, Brimer, Martin, Taylor.

The House has concurred in Senate amendments to **H.B. 356** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 629** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 877** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 889** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1186** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1207** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1463** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1846** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 2368** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 2494** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 2834** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 2841** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 319** by a record vote of 136 Ayes, 0 Noes, 1 Present-not voting.

The House has concurred in Senate amendments to **H.B. 555** by a record vote of 134 Ayes, 0 Noes, 1 Present-not voting.

The House has concurred in Senate amendments to **H.B. 1079** by a record vote of 136 Ayes, 0 Noes, 1 Present-not voting.

The House has adopted the Conference Committee Report on **H.B. 847** by a non-record vote.

The House has adopted the Conference Committee Report on **H.B. 1313** by a non-record vote.

The House has adopted the Conference Committee Report on **H.B. 524** by a record vote of 132 Ayes, 2 Noes, 1 Present-not voting.

The House has adopted the Conference Committee Report on **H.B. 270** by a record vote of 133 Ayes, 0 Noes, 1 Present-not voting.

The House has adopted the Conference Committee Report on **S.B. 460** by a record vote of 110 Ayes, 19 Noes, 2 Present-not voting.

The House has adopted the Conference Committee Report on **S.B. 787** by a record vote of 127 Ayes, 0 Noes, 1 Present-not voting.

Respectfully submitted,

BETTY MURRAY, Chief Clerk
House of Representatives

BILLS AND RESOLUTIONS SIGNED

The President announced the signing in the presence of the Senate, after the captions had been read, the following enrolled bills and resolutions:

S.C.R. 143	S.B. 892
S.C.R. 148	S.B. 946
S.C.R. 153	S.B. 1189
S.J.R. 11	S.B. 1234
S.J.R. 39	S.B. 1511
S.B. 616	S.B. 1533
S.B. 788	

REPORTS OF STANDING COMMITTEES

Senator Brooks submitted the following report for the Committee on Health and Human Services:

H.B. 1682
H.B. 2478
C.S.H.B. 2054
C.S.H.B. 2441
C.S.H.B. 702
C.S.H.B. 271

Senator Truan, Acting Chair, submitted the following report for the Committee on Economic Development:

C.S.H.B. 918
C.S.H.B. 2670

Senator Lyon submitted the following report for the Committee on Criminal Justice:

H.B. 521
C.S.S.B. 767
C.S.H.B. 1657
C.S.H.B. 1816
C.S.H.B. 765

Senator Dickson submitted the following report for the Committee on Economic Development:

H.B. 2265
H.B. 2187
H.B. 1387
H.B. 2802
H.B. 1598
H.B. 1767
H.B. 283
H.B. 42

Senator Green submitted the following report for the Committee on Jurisprudence:

H.B. 358
H.B. 1336
H.B. 1417
H.B. 2235
H.B. 1576
H.B. 598
H.B. 1688
H.B. 2147 (Amended)
H.B. 1430
H.B. 2719 (Amended)

Senator Sims submitted the following report for the Committee on Natural Resources:

H.B. 827
H.B. 1648
H.B. 1744
C.S.H.B. 1771
C.S.S.B. 1607
C.S.S.B. 1617

Senator Whitmire submitted the following report for the Committee on Intergovernmental Relations:

H.B. 1718
H.B. 2782
H.B. 2330

Senator Montford submitted the following report for the Committee on Finance:

C.S.H.B. 2110

H.B. 757 (Amended)

H.B. 1143
H.B. 1800
H.B. 1314 Amended)
H.B. 1413 (Amended)

To be a Member of the BOARD OF DIRECTORS, NUECES RIVER
AUTHORITY: Alvaro D. Saenz, Nueces County.

S.R. 844 by Carriker, Dickson Economic Development
Creating a Special Interim Advisory Committee on Texas-Latin American Trade
in the 1990's to study these issues and serve as a central repository for information
on these matters.

H.C.R. 7, To Committee on Administration.
H.B. 4, To Committee on State Affairs.
H.B. 121, To Committee on Economic Development.
H.B. 454, To Committee on State Affairs.
H.B. 1719, To Committee on State Affairs.
H.B. 2233, To Committee on Economic Development,
Subcommittee on Insurance.
H.B. 2843, To Committee on Jurisprudence.
H.B. 2884, To Committee on Natural Resources.
H.B. 2902, To Committee on Natural Resources.

Austin, Texas
May 18, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S.B. 64 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

GREEN
HARRIS OF TARRANT
LYON
TEJEDA
WHITMIRE
On the part of the Senate

BLACKWOOD
De La GARZA
P. GALLEGOS
OGDEN
PLACE
On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the offense of failure to identify oneself to a peace officer.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 38.02(a) and (b), Penal Code, are amended to read as follows:

(a) A person commits an offense if he intentionally refuses to report or give his name, residence address, or date of birth to a peace officer who has lawfully arrested the person and requested the information.

(b) A person commits an offense if he reports or gives a false or fictitious name, residence address, or date of birth to a peace officer who has:

(1) lawfully arrested the person;

(2) lawfully detained the person; ~~[lawfully arrested the person]~~ or

(3) ~~[who has]~~ requested the information from a person that the peace officer has good cause to believe is a witness to a criminal offense.

SECTION 2. (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 3. This Act takes effect September 1, 1991.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT
ON HOUSE BILL 640

Senator Lucio submitted the following Conference Committee Report:

Austin, Texas
May 22, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on H.B. 640 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

LUCIO
GLASGOW
KRIER
MONCRIEF
MONTFORD
On the part of the Senate

COUNTS
R. CUELLAR
HAGGERTY
MARTIN
OLIVEIRA
On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

SENATE BILL 52 WITH HOUSE AMENDMENT

Senator Green called S.B. 52 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment - Eckels

Amend S.B. 52 by substituting the following:

A BILL TO BE ENTITLED AN ACT

relating to jury service; providing a penalty; making appropriations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 62.001, Government Code, is amended to read as follows:

Sec. 62.001. JURY SOURCE; [ANNUAL] RECONSTITUTION OF JURY WHEEL. (a) The ~~[Each year between October 1 and October 15, the county tax assessor-collector, sheriff, county clerk, and district clerk in each county shall meet at the county courthouse and shall reconstitute the jury wheel for the county. Each official may be represented by a deputy.~~

~~[(b) Except as provided by Subsection (c), the]~~ jury wheel must be reconstituted by using, as the source:[:]

(1) the names of all persons on the current voter registration lists from all the precincts in the county; and[:]

(2) ~~[(c) In a county in which the municipality with the largest population is located in more than one county, the jury wheel may, on approval of the commissioners court and a majority of the district judges having jurisdiction in the county, be reconstituted by using, as an additional source,]~~ all names on a current list to be furnished by the Department of Public Safety, showing the citizens of the county who hold a valid Texas driver's license and the citizens of the county, other than persons who are disqualified from jury service, who hold a valid personal identification card or certificate issued by the department ~~[other than a Class P. The county may contract with another governmental unit or a private person to~~

combine the voter registration list with the list furnished by the Department of Public Safety].

(b) [(d)] Notwithstanding Subsection (a) [Subsections (b) and (c)], the names of persons listed on a register of persons exempt from jury service may not be placed in the jury wheel, as provided by Sections 62.108 and 62.109.

(c) Each year not later than the third Tuesday in November or the date provided by Section 16.032, Election Code, for the cancellation of voter registrations, whichever is earlier, the voter registrar of each county shall furnish to the secretary of state a current voter registration list from all the precincts in the county that, except as provided by Subsection (d), includes:

(1) the complete name, mailing address, date of birth, voter registration number, and precinct number for each voter;

(2) if available, the Texas driver's license number or personal identification card or certificate number and social security number for each voter; and

(3) any other information included on the voter registration list of the county.

(d) The list required by Subsection (c) must exclude the names of convicted felons and the names of persons exempt from jury service under Sections 62.108 and 62.109.

(e) The voter registrar shall send a list of the names of persons excluded to the secretary of state with the list required by Subsection (c).

(f) The Department of Public Safety shall furnish a list to the secretary of state that shows the names required under Subsection (a)(2) and that contains any of the information enumerated in Subsection (c) that is available to the department, including citizenship status. The department shall furnish the list on or before the first Monday in October of each year.

(g) The secretary of state shall accept the lists furnished as provided by Subsections (c) through (f). The secretary of state shall combine the lists, eliminate duplicate names, and send the combined list to each county on or before December 31 of each year or as may be required under a plan developed in accordance with Section 62.011. The district clerk of a county that has adopted a plan under Section 62.011 shall give the secretary of state notice not later than the 90th day before the date the list is required. The list furnished the county must be in a format, electronic or printed copy, as requested by the county and must be certified by the secretary of state stating that the list contains the names required by Subsections (c) through (f), eliminating duplications. The secretary of state shall furnish the list free of charge.

(h) If the secretary of state is unable to furnish the list as provided in this section because of the failure of the voter registrar to furnish the county voter registration list to the secretary of state, the county tax assessor-collector, sheriff, county clerk, and district clerk in the county shall meet at the county courthouse between January 1 and January 15 of the following year and shall reconstitute the jury wheel for the county, except as provided under a plan adopted under Section 62.011. The deadlines included in the plan control for preparing the list and reconstituting the wheel. The secretary of state shall send the list furnished by the Department of Public Safety as provided by Subsection (f) to the voter registrar, who shall combine the lists as described in this section for use as the juror source and certify the combined list as required of the secretary of state under Subsection (g).

(i) In a county with a population of less than 105,000 in which the municipality with the largest population is located in more than one county, the commissioners court may, instead of using the method provided by Subsections (c) through (h), contract with another governmental unit or a private person to combine the voter registration list with the list furnished by the Department of Public Safety.

Subsections (c) through (h) do not apply to a county in which the commissioners court has contracted with another governmental unit or a private person under this subsection. The Department of Public Safety may not charge a fee for furnishing a list under this subsection. Each list must contain the name and address of each person listed. If practical, each list must contain the age and citizenship of each person and any other information useful in determining if the person is qualified to serve as a juror.

[(e) The Department of Public Safety may not charge a fee for furnishing a list under this section:

[(f) Each list must contain the name and address of each person listed. If practical, each list must contain the age and citizenship of each person and any other information useful in determining if the person is qualified to serve as a juror.]

SECTION 2. Section 62.011(d), Government Code, is amended to read as follows:

(d) A state agency or the secretary of state [The Department of Public Safety] may not charge a fee for furnishing a list of names required by Section 62.001.

SECTION 3. Subchapter A, Chapter 62, Government Code, is amended by adding Section 62.0141 to read as follows:

Sec. 62.0141. FAILURE TO ANSWER JURY SUMMONS. In addition to any criminal penalty prescribed by law, a person summoned for jury service who does not comply with the summons as required by law is subject to a contempt action punishable by a fine of not less than \$100 nor more than \$1,000.

SECTION 4. Section 62.106, Government Code, is amended to read as follows:

Sec. 62.106. EXEMPTION FROM JURY SERVICE. A person qualified to serve as a petit juror may establish an exemption from jury service if he:

- (1) is over 65 years of age;
- (2) has legal custody of a child or children younger than 10 years of age and his service on the jury requires leaving the child or children without adequate supervision;
- (3) is a student of a public or private secondary school;
- (4) is a person enrolled and in actual attendance at an institution of higher education;
- (5) is an officer or an employee of the senate, the house of representatives, or any department, commission, board, office, or other agency in the legislative branch of state government; ~~or~~
- (6) is summoned for service in a county with a population of at least 200,000, unless that county uses a jury plan under Section 62.011 and the period authorized under Section 62.011(b)(6) exceeds two years, and he has served as a petit juror in the county during the 24-month period preceding the date he is to appear for jury service; or
- (7) is the primary caretaker of a person who is an invalid unable to care for himself.

SECTION 5. Section 122.002, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 122.002. DAMAGES; REINSTATEMENT; ~~[AND]~~ ATTORNEY'S FEES. (a) A person who is injured because of a violation of this chapter is entitled to reinstatement to his former position and to damages, but the damages may not exceed an amount equal to six months' compensation at the rate at which the person was compensated when summoned for jury service.

~~(b) The [in addition to damages, the] injured person is also~~ entitled to reasonable attorney's fees in an amount approved by the court.

SECTION 6. Section 122.003, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 122.003. DEFENSE. (a) It is a defense to an action brought under this chapter that the employer's circumstances changed while the employee served as a juror so that reemployment was impossible or unreasonable.

(b) To establish a defense under this section, an employer must prove that the termination of employment was because of circumstances other than the employee's service as a juror.

SECTION 7. Section 13.122(a), Election Code, is amended to read as follows:

(a) In addition to the other statements and spaces for entering information that appear on an officially prescribed registration application form, each official form must include:

(1) the statement: "I understand that the giving of false information to procure the registration of a voter is a misdemeanor [felony].";

(2) a space for the applicant's registration number;

(3) a space for the number of the county election precinct in which the applicant resides;

(4) a space for the applicant's telephone number;

(5) a space for the applicant's social security number; [and]

(6) a space for the applicant's Texas driver's license number or personal identification card or certificate number; and

(7) a statement indicating that the furnishing of the applicant's election precinct number, telephone number, [and] social security number, and driver's license or personal identification card or certificate number is optional.

SECTION 8. (a) From amounts appropriated to the Department of Public Safety for the fiscal year ending August 31, 1992, that are not dedicated by the Texas Constitution, the comptroller of public accounts shall transfer \$337,484 to the secretary of state, and that amount is reappropriated to the secretary of state for that fiscal year for the purpose of implementing the changes in law made by this Act to Chapter 62, Government Code.

(b) From amounts appropriated to the Department of Public Safety for the fiscal year ending August 31, 1993, that are not dedicated by the Texas Constitution, the comptroller of public accounts shall transfer \$137,485 to the secretary of state, and that amount is reappropriated to the secretary of state for that fiscal year for the purpose of implementing the changes in law made by this Act to Chapter 62, Government Code.

(c) The Department of Public Safety shall submit to the comptroller of public accounts lists of appropriations from which the transfers will be made and the amount to be transferred from each item. The list for the transfer required by Subsection (a) of this section must be submitted not later than January 1, 1992, and the list for the transfer required by Subsection (b) of this section must be submitted not later than September 1, 1992. If the comptroller does not receive a list required by this subsection, the comptroller may make the transfer from any appropriations to which this section applies.

SECTION 9. (a) In addition to the substantive changes made by this Act, this Act conforms Section 13.122(a), Election Code, to Section 3, Chapter 436, Acts of the 70th Legislature, Regular Session, 1987.

(b) To the extent of any conflict, this Act prevails over another Act of the 72nd Legislature, Regular Session, 1991, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 10. (a) This Act takes effect January 1, 1992.

(b) The changes in the law made by this Act relating to jury service apply only to persons summoned to appear for jury service on or after that date.

(c) The Department of Public Safety is not required to include a person's name on a list submitted to the secretary of state under Section 62.001(f), Government

Code, as amended by this Act, unless the person is issued or renews a driver's license or personal identification card or certificate on or after the effective date of this Act.

SECTION 11. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Green and by unanimous consent, the Senate concurred in the House amendment to S.B. 52 by a viva voce vote.

SENATE BILL 478 WITH HOUSE AMENDMENT

Senator Barrientos called S.B. 478 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment - Vowell

Amend S.B. 478 as follows:

On page 1, line 12, between the words "board" and "consists", insert the following:

"five of whom must be deaf."

The amendment was read.

On motion of Senator Barrientos and by unanimous consent, the Senate concurred in the House amendment to S.B. 478 by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 270 ADOPTED

Senator Haley called from the President's table the Conference Committee Report on H.B. 270. (The Conference Committee Report having been filed with the Senate and read on Wednesday, May 22, 1991.)

On motion of Senator Haley, the Conference Committee Report was adopted by a viva voce vote.

SENATE BILL 518 WITH HOUSE AMENDMENTS

Senator Sims called S.B. 518 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment - Pierce

Amend S.B. 518 by substituting the following:

A BILL TO BE ENTITLED AN ACT

relating to the authority of the State Highway and Public Transportation Commission to provide specific information logo signs along interstate highways.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 4.07, Chapter 741, Acts of the 67th Legislature, Regular Session, 1981 (Article 4477-9a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.07. OFFICIAL SIGNS. (a) In this section, "specific information logo sign" means a rectangular sign panel imprinted with the words "GAS," "FOOD,"

“LODGING,” or “CAMPING,” or with a combination of those words, and the names of commercial establishments offering those services.

(b) The commission shall contract with a person, firm, group, or association in the State of Texas to erect and maintain signs that give specific information of interest to the travelling public, including specific brand names, at appropriate locations along interstate highways in each county with a population less than 20,000. [The commission may designate and provide official signs that give specific information of interest to the traveling public, including specific brand names.]

(c) The commission shall:

(1) regulate the content, composition, placement, erection, and maintenance of specific information logo signs and supports within interstate highway rights-of-way; and

(2) adopt rules necessary to administer and enforce this section.

(d) A commercial establishment identified on a specific information logo sign shall conform to all applicable laws concerning the provision of public accommodations without regard to race, religion, color, sex, or national origin.

(e) To be eligible to have its name displayed on a specific information logo sign, a commercial establishment must provide gas, food, lodging, or camping and be located not farther than three miles from an interchange on an interstate highway. If no service is located within three miles of an interchange, the commission may grant permits for commercial establishments not farther than 15 miles from the interchange.

(f) If an establishment provides gas, the establishment must provide:

(1) vehicle services, including providing fuel, oil, and water;

(2) if the establishment is not a self-service station, tire repair;

(3) restroom facilities and drinking water;

(4) continuous operation at least 12 hours a day, seven days a week;

and

(5) a telephone for use by the public.

(g) If an establishment provides food, the establishment must provide:

(1) a license or other evidence of compliance with public health or sanitation laws, if required by applicable other law;

(2) continuous operation at least 12 hours a day to serve three meals a day;

(3) seating capacity for at least 16 people;

(4) public restrooms; and

(5) a telephone for use by the public.

(h) If an establishment provides lodging, the establishment must provide:

(1) a license or other evidence of compliance with laws regulating facilities providing lodging, if required by applicable other law;

(2) at least 10 rooms; and

(3) a telephone for use by the public.

(i) If an establishment provides camping, the establishment must provide:

(1) a license or other evidence of compliance with laws regulating camping facilities, if required by applicable other law;

(2) adequate parking accommodations; and

(3) modern sanitary facilities and drinking water.

(j) A specific information logo sign must:

(1) have a blue background with a white reflective border; and

(2) contain a principal legend equal in height to the directional legend.

(k) A specific information logo sign may not:

(1) contain a message, symbol, or trademark that resembles an official traffic control device;

(2) have vertical spacing between establishment names that exceeds eight inches or horizontal spacing between establishment names that exceeds 12 inches;

(3) contain more than four establishment names for each service on one sign panel; or

(4) contain logos for more than one service on a sign panel except in an area where not more than two qualified establishments are available for a service, in which event a sign panel may contain logos for two services.

(l) The contractor shall place a specific information logo so that:

(1) the sign is at least 800 feet from the previous interchange and at least 800 feet from the exit direction sign at the interchange from which the services are available;

(2) there are at least 800 feet between two signs having the same legend, but the signs are not excessively spaced;

(3) a motorist, after following the sign, can conveniently reenter the highway and continue in the original direction of travel; and

(4) if the service facilities are not visible from a single-exit interchange ramp terminal, the signs are placed along the ramp or at the ramp terminal.

(m) A specific information logo sign that is placed along a ramp or at a ramp terminal must be a duplicate of the corresponding establishment logo sign except that the ramp sign must be smaller and omit the service information. A ramp sign shall include the distance to the commercial establishment and directional arrows instead of directions written in words.

[(b) The signs may be erected and maintained within rights-of-way at appropriate distances from interchanges and at appropriate locations on the interstate and primary systems.]

(n) The commission shall remit money received under this section to the the state treasurer for deposit into the state highway fund.

SECTION 2. Art. 4477-9a, Sec. 4.04, is amended to read as follows:

Sec. 4.04. (a) A person who has not obtained a license under this article commits an offense if that person erects or maintains a sign:

(1) within 660 feet of the interstate or primary system, if the sign is visible from the main-traveled way; or

(2) outside an urban area if the sign is located more than 660 feet from the nearest edge of right-of-way, is visible from the main-traveled way of the interstate or primary system, and was erected for the purpose of having its message seen from the main-traveled way of the interstate or primary system.

(b) The commission shall issue a license to a person who:

(1) completes the application form specified by the commission within the time specified by the commission;

(2) pays the license fee [of \$125, and] as determined by the commission, provided however:

(A) such fee shall not exceed an amount reasonably necessary to cover the administrative costs incurred to enforce this act which shall be determined through the legislature's appropriation process; and

(B) any permit renewal fees paid in advance of the effective date of this act shall be either refunded or prorated as determined by the commission; and

(C) the license and fees authorized pursuant to this section shall be in lieu of an annual renewal permit or fee otherwise authorized or promulgated by the commission; and

(3) files with the commission a surety bond:

(A) in the amount of \$2,500 for each county in the state in which the person erects or maintains outdoor advertising; and

(B) payable to the commission to reimburse it for removal costs of a sign the licensee unlawfully erects or maintains.

(c) A person may not be required to provide more than \$10,000 in surety bonds.

(d) The commission may revoke or suspend a license issued under this section if the licensee:

(1) violates a provision of this article; or

(2) violates a commission rule adopted under this article.

(e) A person whose license is revoked or suspended may appeal the revocation or suspension to a district court in Travis County. The appeal must be taken not later than the 15th day after the day of the commission's action.

(f) For the efficient management and administration of this Act and in an effort to reduce the number of employees required to enforce such provisions, the commission shall promulgate rules for the issuance of standardized forms for submission by licensees which accurately reflect the number, location, or other information required by the commission of each licensee's signs.

SECTION 3. This Act takes effect September 1, 1991. An official sign erected and maintained within the right-of-way of an interstate highway in compliance with Section 4.07, Chapter 741, Acts of the 67th Legislature, Regular Session, 1981 (Article 4477-9a, Vernon's Texas Civil Statutes), before that date is considered in compliance with this Act.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment - Stiles

Amend C.S.S.B. 518 by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Section 4.07, Chapter 741, Acts of the 67th Legislature, Regular Session, 1981 (Article 4477-9a, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.07. OFFICIAL SIGNS. (a) In this section, "specific information logo sign" means a rectangular sign panel imprinted with the words "GAS," "FOOD," "LODGING," or "CAMPING," or with a combination of those words, and the names of commercial establishments offering those services.

(b) The commission shall contract with a person, firm, group, or association in the State of Texas to erect and maintain signs that give specific information of interest to the travelling public, including specific brand names, at appropriate locations along interstate highways in each county with a population less than 20,000. [The commission may designate and provide official signs that give specific information of interest to the traveling public, including specific brand names.]

(c) The commission shall:

(1) regulate the content, composition, placement, erection, and maintenance of specific information logo signs and supports within interstate highway rights-of-way; and

(2) adopt rules necessary to administer and enforce this section.

(d) A commercial establishment identified on a specific information logo sign shall conform to all applicable laws concerning the provision of public accommodations without regard to race, religion, color, sex, or national origin.

(e) To be eligible to have its name displayed on a specific information logo sign, a commercial establishment must provide gas, food, lodging, or camping and be located not farther than three miles from an interchange on an interstate highway. If no service is located within three miles of an interchange, the commission may

grant permits for commercial establishments not farther than 15 miles from the interchange.

(f) If an establishment provides gas, the establishment must provide:

- (1) vehicle services, including providing fuel, oil, and water;
- (2) if the establishment is not a self-service station, tire repair;
- (3) restroom facilities and drinking water;
- (4) continuous operation at least 12 hours a day, seven days a week;

and

(5) a telephone for use by the public.

(g) If an establishment provides food, the establishment must provide:

- (1) a license or other evidence of compliance with public health or sanitation laws, if required by applicable other law;
- (2) continuous operation at least 12 hours a day to serve three meals a day;

(3) seating capacity for at least 16 people;

(4) public restrooms; and

(5) a telephone for use by the public.

(h) If an establishment provides lodging, the establishment must provide:

- (1) a license or other evidence of compliance with laws regulating facilities providing lodging, if required by applicable other law;
- (2) at least 10 rooms; and
- (3) a telephone for use by the public.

(i) If an establishment provides camping, the establishment must provide:

- (1) a license or other evidence of compliance with laws regulating camping facilities, if required by applicable other law;
- (2) adequate parking accommodations; and
- (3) modern sanitary facilities and drinking water.

(j) A specific information logo sign must:

(1) have a blue background with a white reflective border; and

(2) contain a principal legend equal in height to the directional legend.

(k) A specific information logo sign may not:

(1) contain a message, symbol, or trademark that resembles an official traffic control device;

(2) have vertical spacing between establishment names that exceeds eight inches or horizontal spacing between establishment names that exceeds 12 inches;

(3) contain more than four establishment names for each service on one sign panel; or

(4) contain logos for more than one service on a sign panel except in an area where not more than two qualified establishments are available for a service, in which event a sign panel may contain logos for two services.

(l) The contractor shall place a specific information logo so that:

(1) the sign is at least 800 feet from the previous interchange and at least 800 feet from the exit direction sign at the interchange from which the services are available;

(2) there are at least 800 feet between two signs having the same legend, but the signs are not excessively spaced;

(3) a motorist, after following the sign, can conveniently reenter the highway and continue in the original direction of travel; and

(4) if the service facilities are not visible from a single-exit interchange ramp terminal, the signs are placed along the ramp or at the ramp terminal.

(m) A specific information logo sign that is placed along a ramp or at a ramp terminal must be a duplicate of the corresponding establishment logo sign except that the ramp sign must be smaller and omit the service information. A ramp sign

shall include the distance to the commercial establishment and directional arrows instead of directions written in words.

~~[(b) The signs may be erected and maintained within rights-of-way at appropriate distances from interchanges and at appropriate locations on the interstate and primary systems.]~~

(n) The commission shall remit money received under this section to the the state treasurer for deposit into the state highway fund.

SECTION 2. Art. 4477-9a, Sec. 4.04, is amended to read as follows:

Sec. 4.04. (a) A person who has not obtained a license under this article commits an offense if that person erects or maintains a sign:

(1) within 660 feet of the interstate or primary system, if the sign is visible from the main-traveled way; or

(2) outside an urban area if the sign is located more than 660 feet from the nearest edge of right-of-way, is visible from the main-traveled way of the interstate or primary system, and was erected for the purpose of having its message seen from the main-traveled way of the interstate or primary system.

(b) The commission shall issue a license to a person who:

(1) completes the application form specified by the commission within the time specified by the commission;

(2) pays the license fee ~~[of \$125; and]~~ as determined by the commission, provided however:

(A) such license fee and those permit fees required by Section 4.05 of this article shall not exceed an amount reasonably necessary to cover the administrative costs incurred to enforce this article; and

(B) any permit renewal fees paid in advance of the effective date of this act shall be either refunded or prorated as determined by the commission; and

(C) at the commission's discretion, the license authorized pursuant to this section may be issued for periods of one year or longer and the license fee for such license may be based on a graduated scale by number of signs owned by a licensee; and

(3) files with the commission a surety bond:

(A) in the amount of \$2,500 for each county in the state in which the person erects or maintains outdoor advertising; and

(B) payable to the commission to reimburse it for removal costs of a sign the licensee unlawfully erects or maintains.

(c) A person may not be required to provide more than \$10,000 in surety bonds.

(d) For the efficient management and administration of this Act and in an effort to reduce the number of employees required to enforce such provisions, the commission shall promulgate rules for the issuance of standardized forms for submission by licensees which accurately reflect the number, location, or other information required by the commission of each licensees' signs.

(e) The commission's only responsibility for the regulation of signs shall be on federal-aid primary highways, interstate highways, state highways, and farm-to-market roads.

(f) The commission may revoke or suspend a license issued under this section if the license:

(1) violates a provision of this article; or

(2) violates a commission rule adopted under this article.

(g) [(e)] A person whose license is revoked or suspended may appeal the revocation or suspension to a district court in Travis County. The appeal must be taken not later than the 15th day after the day of the commission's action.

(h) The commission may promulgate rules for the implementation of the provisions of this section and for the reissuance of a revoked or suspended license and may set fees for such reissuance.

SECTION 3. Art. 4477-9a Sec. 4.05 is amended to read as follows:

Sec. 4.05. (a) A person who has a license commits an offense if that person erects or maintains a sign for which a license is required by Section 4.04 (a) of this article unless that person also has a permit for that sign.

(b) The commission shall adopt rules specifying:

(1) a reasonable fee for each permit; such permit fees and the license fee required by Sec. 4.04 of this article shall not exceed an amount reasonably necessary to cover the administrative costs incurred to enforce this article;

(2) the time for and manner of applying for a permit and the form of the permit application; and

(3) the information that must be in a permit application.

(c) The commission shall issue a permit to a person with a license whose license application complies with the commission's rules adopted under Section 4.04 of this article and whose sign, or leased sign, if erected, would comply with this article and the commission's rules adopted under Section 4.03(d) of this article.

(d) A permit issued to control the erection and maintenance of outdoor advertising by a political subdivision of this state within the jurisdiction of the political subdivision shall be accepted in lieu of the permit required by this section if the erection and maintenance of outdoor advertising is in compliance with Section 4.04 of this article and the commission's rules adopted under Section 4.03(d) of this article.

(e) Funds the commission receives under this article shall be deposited in the state treasury in a special fund to be known as the Texas highway beautification fund. The commission shall use the fund in the administration of this article.

SECTION 4. This Act takes effect September 1, 1991. An official sign erected and maintained within the right-of-way of an interstate highway in compliance with Section 4.07, Chapter 741, Acts of the 67th Legislature, Regular Session, 1981 (Article 4477-9a, Vernon's Texas Civil Statutes), before that date is considered in compliance with this Act.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendments were read.

On motion of Senator Sims and by unanimous consent, the Senate concurred in the House amendments to S.B. 518 by a viva voce vote.

SENATE BILL 608 WITH HOUSE AMENDMENTS

Senator Johnson called S.B. 608 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment - Schoolcraft

Amend S.B. 608 by inserting the following new section, appropriately numbered, and renumbering the subsequent sections accordingly:

SECTION _____. (a) A school district is exempt from a state educational mandate imposed by this Act for which the legislature has not appropriated funds estimated to be sufficient to meet the expenditure required by the mandate at the

time the mandate is effective unless this Act is passed by a vote of two-thirds of the membership in each house of the legislature.

(b) In this section, "state educational mandate" means a statutory provision the implementation of which requires an expenditure by a school district that would not have been required in the absence of the statutory provision and rules adopted under that provision.

Amendment on Third Reading - Culberson, Berlanga

Amend S.B. 608 on third reading by striking the section added on second reading relating to state educational mandates.

The amendments were read.

Senator Johnson moved to concur in the House amendments to S.B. 608.

The motion prevailed by the following vote: Yeas 31, Nays 0.

PERMISSION TO MEET GRANTED

On motion of Senator Moncrief and by unanimous consent, the Conference Committee on S.B. 1 was granted permission to meet while the Senate was in session.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 847 ADOPTED**

Senator Brooks called from the President's table the Conference Committee Report on H.B. 847. (The Conference Committee Report having been filed with the Senate and read on Tuesday, May 21, 1991.)

On motion of Senator Brooks, the Conference Committee Report was adopted by a viva voce vote.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1181 ADOPTED**

Senator Armbrister called from the President's table the Conference Committee Report on H.B. 1181. (The Conference Committee Report having been filed with the Senate and read on Friday, May 17, 1991.)

On motion of Senator Armbrister, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 1313 ADOPTED**

Senator Lyon called from the President's table the Conference Committee Report on H.B. 1313. (The Conference Committee Report having been filed with the Senate and read on Tuesday, May 21, 1991.)

On motion of Senator Lyon, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 787 ADOPTED**

Senator Sims called from the President's table the Conference Committee Report on S.B. 787. (The Conference Committee Report having been filed with the Senate and read on Tuesday, May 21, 1991.)

On motion of Senator Sims, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

SENATE BILL 984 WITH HOUSE AMENDMENTS

Senator Armbrister called S.B. 984 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment - Hury

Amend S.B. 984 as follows:

1. On page 6, line 2, strike "or property owner"
2. On page 6, beginning on line 4, strike "or of a county in which the school district's administrative office is located"
3. On page 6, line 7, strike "or property owner".

Committee Amendment - Hury

Amend S.B. 984 on page 6, line 9, by deleting "standard for judicial review shall be de novo."

Amend S.B. 984 on page 6, lines 10 through 16, but retaining current law except the word "board" on line 10, line 13 and line 15 and replacing it with "comptroller."

Amendment on Third Reading - Von Dohlen

Amend S.B. 984 on third reading by striking SECTIONS 14 and 15 and substituting the following:

SECTION 14. The State Property Tax Board has the burden of proof at a hearing conducted under Section 11.86(e), Education Code, regarding the accuracy of findings made by the board. The burden of proof regarding the accuracy of findings made by the board shall remain on the board until the comptroller assumes the duties required under Section 11.86, Education Code, as provided by this Act.

SECTION 15. This Act takes effect September 1, 1991, except that Section 14 takes effect immediately on passage of this Act.

SECTION 16. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

The amendments were read.

On motion of Senator Armbrister and by unanimous consent, the Senate concurred in the House amendments to S.B. 984 by the following vote: Yeas 31, Nays 0.

SENATE BILL 1169 WITH HOUSE AMENDMENT

Senator Leedom called S.B. 1169 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Amendment - Ovard

Amend S.B. 1169 by substituting the following:

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of consumer telephone calls; providing civil penalties and injunctive relief.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Business and Commerce Code, V.C.T.A., is amended by adding Chapter 37 to read as follows:

CHAPTER 37. TELEPHONE SOLICITATION

Sec. 37.01. DEFINITIONS. In this article:

(1) "Automated dialing announcing device" means automated equipment used for telephone solicitation or collection that is capable:

(A) of storing telephone numbers to be called or has a random or sequential number generator capable of producing numbers to be called;
and

(B) alone or in conjunction with other equipment, of conveying a prerecorded or synthesized voice message to the number called without the use of a live operator.

(2) "Consumer" means a person who is solicited to purchase, lease, or receive a consumer good or service.

(3) "Consumer good or service" means:

(A) real property or tangible or intangible personal property that is normally used for personal, family, or household purposes, including personal property intended to be attached to or installed in any real property;

(B) a cemetery lot;

(C) a time-share estate; and

(D) a service related to real or personal property.

(4) "Consumer telephone call" means an unsolicited call made to a residential telephone number by a telephone solicitor to:

(A) solicit a sale of a consumer good or service;

(B) solicit an extension of credit for a consumer good or service; or

(C) obtain information that will or may be used to directly solicit a sale of a consumer good or service or to extend credit for the sale.

(5) "Telephone solicitor" means a person who makes or causes to be made a consumer telephone call, including a call made by an automated dialing device.

Sec. 37.02. SOLICITOR IDENTITY; PERMISSIBLE HOURS; DISCONNECT. (a) A telephone solicitor may not make a consumer telephone call to a consumer unless:

(1) the telephone solicitor identifies himself or herself by name and identifies the business on whose behalf the telephone solicitor is calling and the purpose of the call immediately after making contact with the consumer to whom the call is made;

(2) the telephone solicitor makes the call after 12 noon or before 9 p.m. on a Sunday or after 9 a.m. and before 9 p.m. on a weekday or a Saturday; and

(3) for those calls in which an automated dial announcing device is used, where technically possible, the device must disconnect the consumer's telephone line within 30 seconds after termination of the call by either the telephone solicitor or the consumer.

(b) A consumer telephone call is not subject to the provisions of subsection (a) if the call is made:

- (1) in response to the express request of the consumer;
- (2) primarily in connection with an existing debt or contract for which payment or performance has not been completed at the time of the call; or
- (3) to a consumer with whom the telephone solicitor has a prior or existing business relationship.

Sec. 37.03. CHARGES TO CONSUMER CREDIT ACCOUNT. A person who sells consumer goods and services through the use of a telephone solicitor may not make or submit a charge to a consumer's credit card account unless:

(1) the seller provides that the consumer may receive a full refund for the return of undamaged and unused goods or a cancellation of services by providing notice to the seller not later than the seventh day after the date the consumer receives the goods or services and in which the seller will process:

(A) a refund not later than the 30th day after the date the seller receives the returned merchandise from the consumer; or services and in which the seller will process;

(B) a full refund not later than the 30th day after the purchaser of services cancels an order for the purchase of services not performed or a pro rata refund for any services not yet performed for the consumer, or

(2) the seller provides to the consumer a written contract fully describing the goods or services being offered, the total price to be charged, the name, address and business phone of the seller and any terms or conditions affecting the sale and receives from the consumer a signed copy of such contract; or

(3) the seller is an organization that qualifies for and has obtained an exemption from federal income tax from the Internal Revenue Service under Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3)).

Sec. 37.04. ENFORCEMENT. (a) The attorney general's office shall investigate a complaint relating to a violation of this article and may petition a district court for a temporary restraining order to restrain a continuing violation of this article and for the assessment of a civil penalty as provided by Section 37.05 of this Act.

(b) A district court, on petition of the attorney general's office and on a finding by the court that a person is violating this article may, by injunction, prohibit a person from continuing a violation of this article or grant any other injunctive relief warranted by the facts.

(c) Venue for a suit brought under this chapter is in:

- (1) the county in which the consumer telephone call originated;
- (2) the county in which the consumer telephone call was received; or
- (3) Travis County.

Sec. 37.05. CIVIL PENALTY. (a) A person who knowingly violates this article is liable for a civil penalty of not more than \$10,000 for each violation.

(b) In addition to bringing an action for injunctive relief, the attorney general may also seek restitution and civil penalties as provided herein.

(c) A consumer injured by a violation of this chapter may bring any action for recovery of damages. The damages awarded may not be less than the amount paid by the buyer to the telephone solicitor, plus reasonable attorney's fees and court costs.

SECTION 2. The Public Utility Regulatory Act (Article 1446C, Vernon's Texas Civil Statutes) is amended by adding Sec. 119 and Sec. 120 to read as follows:

Sec. 119. Every telephone solicitor operating in this State who makes consumer telephone calls subject to Sec. 37.02 of the Business and Commerce Code shall implement in-house systems and procedures so that every effort is made not

to call consumers who ask not to be called again. The commission is granted all necessary power and authority to enforce the provisions of this section.

Sec. 120. The commission by rule shall require that a local exchange telephone company or telephone cooperative inform its customers of the provisions of Chapter 37 of the Business and Commerce Code and Sec. 115 by:

(1) inserting the notice annually in the billing statement mailed to a customer; or

(2) publishing the notice in the consumer information pages of its local telephone directory.

SECTION 3. This act takes effect January 1, 1992.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Leedom and by unanimous consent, the Senate concurred in the House amendment to S.B. 1169 by a viva voce vote.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1214 ADOPTED

Senator Armbrister called from the President's table the Conference Committee Report on H.B. 1214. (The Conference Committee Report having been filed with the Senate and read on Friday, May 17, 1991.)

On motion of Senator Armbrister, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

GUEST PRESENTED

Senator Green was recognized and introduced Israeli Consul General Mordekhai Artzieli.

The Senate welcomed Consul General Artzieli.

(Senator Armbrister in Chair)

SENATE BILL 81 WITH HOUSE AMENDMENTS

Senator Whitmire called S.B. 81 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment - Colbert

Amend S.B. 81 as follows: In Section 2, strike Sec. 230.006(d).

Amendment - Shea

Amend S.B. 81 on page 1, line 13, by adding the following between the word "residents" and the period:

"or a municipality that does not have zoning ordinances and passes an ordinance that requires uniform application and enforcement of this subchapter with regard to all property and residents".

The amendments were read.

On motion of Senator Whitmire and by unanimous consent, the Senate concurred in the House amendments to S.B. 81 by a viva voce vote.

(President in Chair)

**VOTE ON CONCURRENCE OF HOUSE AMENDMENTS
TO SENATE BILL 764 RECONSIDERED**

On motion of Senator Lucio and by unanimous consent, the vote by which the Senate concurred in the House amendments to S.B. 764 was reconsidered.

Question—Shall the Senate concur in the House amendments to S.B. 764?

Senator Lucio moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.B. 764 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Lucio, Chair; Bivins, Armbrister, Brooks, Tejada.

**COMMITTEE SUBSTITUTE
HOUSE BILL 9 ON SECOND READING**

Senator Lyon asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

C.S.H.B. 9, Relating to the waiver of a jury trial for a person charged with a capital offense and to the punishment, sentencing, and availability of parole for a person convicted of a capital offense.

There was objection.

Senator Lyon then moved to suspend the regular order of business and take up C.S.H.B. 9 for consideration at this time.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Brown, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Krier, Leedom, Lucio, Lyon, Moncrief, Montford, Parker, Ratliff, Sibley, Sims, Tejada, Truan, Turner, Whitmire, Zaffirini.

Nays: Johnson, Rosson.

The bill was read second time.

Senator Brown offered the following amendment to the bill:

Floor Amendment No. 1

Amend C.S.H.B. 9 by adding new SECTIONS 14, 15, and 16 and renumbering subsequent sections as follows:

SECTION 14. Subsection (a), Section 19.03, Penal Code, is amended to read as follows:

(a) A person commits an offense if he commits murder as defined under Section 19.02(a)(1) of this code and:

(1) the person murders a peace officer or fireman who is acting in the lawful discharge of an official duty and who the person knows is a peace officer or fireman;

(2) the person intentionally commits the murder in the course of committing or attempting to commit kidnapping, burglary, robbery, aggravated sexual assault, or arson;

(3) the person commits the murder for remuneration or the promise of remuneration or employs another to commit the murder for remuneration or the promise of remuneration;

(4) the person commits the murder while escaping or attempting to escape from a penal institution;

(5) the person, while incarcerated in a penal institution, murders another who is employed in the operation of the penal institution; [or]

(6) the person murders more than one person:

(A) during the same criminal transaction; or

(B) during different criminal transactions but the murders are committed pursuant to the same scheme or course of conduct; or

(7) the person murders an individual under 6 years of age and the person knows the individual is under 6 years of age.

SECTION 15. (a) The change in law made by this Act applies to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 16. SEVERABILITY. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

The amendment was read and was adopted by a viva voce vote.

(Senator Harris of Dallas in Chair)

Senator Leedom offered the following amendment to the bill:

Floor Amendment No. 2

(1) Amend C.S.H.B. 9 by inserting a new SECTION 10 and renumbering the remaining SECTIONS accordingly as follows:

SECTION 10. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.101 to read as follows:

Art. 42.101. TRANSFER OF PERSON RELEASED ON PROBATION, PAROLE, OR MANDATORY SUPERVISION. (a) The state may not transfer to another state for purposes of treatment, supervision, or rehabilitation, a person released on probation, parole, or mandatory supervision following conviction of an offense defined as a capital felony under the Penal Code.

(b) The state may not receive from another state for purposes of treatment, supervision, or rehabilitation a person released on probation, parole, or mandatory supervision following conviction of an offense that is substantially similar to an offense defined as a capital felony under the Penal Code.

(c) This article does affect powers and duties relating to a person currently accused of an offense.

(2) Amend Subsections (a) and (b) and add Subsection (c) to SECTION 14 of C.S.H.B. 9, renumbered as SECTION 15 by Paragraph (a) of this amendment to read as follows:

SECTION 15. (a) The changes in law made by Sections 1-9 and 12, 13, and 14 of this Act apply to the trial of a capital offense that commences on or after the effective date of this Act, whether the trial is for an offense committed before, on, or after the effective date.

(b) The change in law made to Section 8(b), Article 42.18, Code of Criminal Procedure, by Section 11 of this Act applies only to a defendant convicted of a capital offense committed on or after the effective date of this Act. For purposes of this subsection, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date. A defendant convicted of an offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

(c) The changes in law made by Section 10 of this Act apply only to a person released on probation, parole, or mandatory supervision who is transferred to or from the state on or after September 1, 1991. A person released on probation, parole, or mandatory supervision who is transferred to or from the state before September 1, 1991, is covered by the law in effect on the date transfer occurred, and the former law is continued in effect for this purpose.

The amendment was read and was adopted by a viva voce vote.

RECORD OF VOTE

Senator Moncrief asked to be recorded as voting "Nay" on the adoption of the amendment.

On motion of Senator Lyon and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 9 ON THIRD READING

Senator Lyon moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that C.S.H.B. 9 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Brown, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Krier, Leedom, Lucio, Lyon, Moncrief, Montford, Parker, Ratliff, Sibley, Sims, Tejada, Truan, Turner, Whitmire, Zaffirini.

Nays: Johnson, Rosson.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTES

Senators Johnson and Rosson asked to be recorded as voting "Nay" on the final passage of the bill.

GUEST PRESENTED

The Presiding Officer acknowledged the presence of Congressman Jack Fields, representing Harris County.

The Senate welcomed Congressman Fields.

GUESTS PRESENTED

Senator Henderson was recognized and introduced a group of fourth grade students from Kingwood Christian School.

The Senate welcomed these students.

SENATE RESOLUTION 843

Senator Lucio offered the following resolution:

WHEREAS, The Senate of the State of Texas is proud to honor Sharyland High School of Mission on the occasion of its winning the University Interscholastic League District Literary Contest for the 33rd consecutive year; and

WHEREAS, Over the years, dedicated and hardworking Sharyland students have won this enviable and unprecedented string of victories while competing in five different district classes; and

WHEREAS, Sharyland captured its first title in District 32B competition during the 1958-1959 school year; it entered 32A competition in 1962, 32AA in 1968, 32AAA in 1978, and 32AAAA in 1990; and

WHEREAS, Participants in the district literary contest compete against teams from throughout the district in one-act-play, academic, and speaking contests; and

WHEREAS, A justifiable source of great pride to Sharyland students and faculty and to the greater Mission community, the school's splendid record is truly deserving of special legislative recognition; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 72nd Legislature, hereby commend Sharyland High School for its exemplary record of achievement in the UIL district literary competition and extend best wishes for continued success in the future; and, be it further

RESOLVED, That an official copy of this resolution be prepared for presentation to Sharyland High School as an expression of high regard by the Senate of the State of Texas.

The resolution was read.

On motion of Senator Truan and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

On motion of Senator Lucio, the resolution was adopted by a viva voce vote.

CAPITOL PHYSICIAN

Senator Montford, on behalf of Senator Glasgow, was recognized and presented Dr. Ty Lee Gore of Mineral Wells as the "Doctor for the Day."

The Senate welcomed Dr. Gore and thanked him for his participation in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians.

(President in Chair)

**COMMITTEE SUBSTITUTE
HOUSE BILL 1814 ON SECOND READING**

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1814, Relating to the administration of certain state and local taxes.

The bill was read second time.

Senator Montford offered the following amendment to the bill:

Amend **C.S.H.B. 1814** as follows:

(1) On page 11, lines 4-70, through page 13, lines 1-6, delete SECTION 40 in its entirety and substitute the following:

SECTION 40. Section 3, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), is amended by adding Subsection (f) to read as follows:

(f) This section does not authorize withholding from the public or limiting the availability to the public of a written determination letter, technical advice memorandum, or ruling that concerns a tax matter and that is issued by a governmental body with taxing authority.

(2) On page 13, lines 17-70, through page 14, lines 1-38, delete SECTIONS 42, 43, and 44 in their entirety and renumber the subsequent sections accordingly.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Montford and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1814 ON THIRD READING**

Senator Montford moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1814** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 1826 ON SECOND READING

On motion of Senator Sims and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1826, Relating to the establishment and funding of a young farmer endowment program.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1826 ON THIRD READING

Senator Sims moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **H.B. 1826** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

MESSAGE FROM THE HOUSE

House Chamber
May 24, 1991

HONORABLE BOB BULLOCK
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

H.C.R. 236, Honoring Birdie Artelia Mackey Caldwell on her exceptional career in education.

H.C.R. 245, Extending best wishes to Superintendent Roy W. Cagle on the occasion of his retirement.

S.C.R. 123, In memory of Maribelle Hamblen Reich.

S.C.R. 141, Extending congratulations to the Pete Cortez family for their exceptional contributions to the City of San Antonio and the citizens of Texas.

S.C.R. 145, Extending appreciation to Dr. Wendell H. Nedderman for his exceptional contributions to the citizens of Texas.

S.C.R. 147, Extending gratitude to the agencies and organizations who freely volunteer their time for the unification and coordination of comprehensive school health programming to help school-age children.

S.C.R. 151, Commending the Four Seasons Clowns for their exemplary performances and immeasurable contributions to the festive air of the Texas Capitol Salute.

Respectfully submitted,

BETTY MURRAY, Chief Clerk
House of Representatives

GUESTS PRESENTED

Senator Tejeda was recognized and introduced a group of fourth grade students from Burnet Elementary School.

The Senate welcomed these guests.

GUESTS PRESENTED

Senator Zaffirini was recognized and introduced a group of parents, teachers and seventh grade students from Immaculate Conception School.

The Senate welcomed these guests.

SENATE RESOLUTION 719 LAID ON TABLE SUBJECT TO CALL

On motion of Senator Harris of Dallas and by unanimous consent, **S.R. 719** was Laid on Table Subject to Call.

**COMMITTEE SUBSTITUTE
SENATE CONCURRENT RESOLUTION 152
ON SECOND READING**

On motion of Senator Bivins and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading:

C.S.S.C.R. 152, Informing the Department of Energy of our serious interest in the expansion of Pantex through a reconfiguration of nuclear weapons system.

The resolution was read second time and was adopted by a viva voce vote.

RECORD OF VOTES

Senators Johnson, Rosson, Moncrief, Parker, Tejeda and Zaffirini asked to be recorded as voting "Nay" on the adoption of the resolution.

HOUSE BILL 520 ON SECOND READING

On motion of Senator Tejeda and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 520, Relating to permitting a victim, close relative of a deceased victim, or guardian of a victim to make a statement before pronouncement of sentence in a criminal case.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 520 ON THIRD READING

Senator Tejeda moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **H.B. 520** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 2057 ON SECOND READING

On motion of Senator Leedom and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2057, Relating to the publication of the Texas Register.

The bill was read second time.

Senator Leedom offered the following amendment to the bill:

Amend **H.B. 2057** by inserting a new SECTION 4 and renumbering the remaining SECTIONS accordingly as follows:

SECTION 4. If the secretary of state determines that the implementation of this Act will entail the expenditures of additional general revenue funds, the provisions of this Act shall not be implemented until authorized by a specific rider or line item appropriation to cover this expense is included in a general or special appropriations act. If this Act cannot be implemented for the reasons specified in this section, the secretary of state shall make a request for funds to implement this Act in each succeeding budget request.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Leedom and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2057 ON THIRD READING

Senator Leedom moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that H.B. 2057 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 1376 ON SECOND READING

On motion of Senator Haley and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1376, Relating to exemptions from regular registration fees and from inspection for vehicles used to transport log loaders.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1376 ON THIRD READING

Senator Haley moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that H.B. 1376 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 1175 ON SECOND READING

On motion of Senator Harris of Tarrant and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1175, Relating to restrictions on the sale or purchase of certain metal products by secondhand metal dealers; providing criminal penalties.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1175 ON THIRD READING

Senator Harris of Tarrant moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that H.B. 1175 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**MOTION TO PLACE
HOUSE BILL 2812 ON SECOND READING**

Senator Barrientos moved to suspend the regular order of business to consider **H.B. 2812** on its second reading and passage to third reading.

H.B. 2812, relating to the presiding judge of the municipal courts of record in Austin.

On motion of Senator Barrientos and by unanimous consent, the motion to suspend the regular order of business was withdrawn.

HOUSE BILL 2140 ON SECOND READING

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2140, Relating to the commissioning as peace officers of investigators appointed by the attorney general.

The bill was read second time.

Senator Zaffirini offered the following amendment to the bill:

Amend Section 2, Article 2.12(7) of **H.B. 2140** to read as follows:

"each member of an arson investigating unit commissioned by a city, county, or the state;"

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Ellis and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2140 ON THIRD READING

Senator Ellis moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **H.B. 2140** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 1004 ON SECOND READING

On motion of Senator Johnson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1004, Relating to the Texas tuition assistance grant program.

The bill was read second time.

Senator Johnson offered the following amendment to the bill:

Amend **H.B. 1004** as follows:

(1) Insert new SECTIONS 3, 4, and 5 to read as follows:

SECTION 3. Section 61.536, Education Code, is amended to read as follows:

Sec. 61.536. ADVISORY COMMITTEES. (a) The coordinating board shall [may]:

(1) appoint advisory committees from outside the board's membership to assist the board in performing its duties under this subchapter; and

(2) request the assistance of the Family Practice Residency Advisory Committee in performing those duties.

(b) The Physician Loan Repayment Advisory Committee is created and shall consist of nine members.

(1) One member shall be an employee of the Texas Department of Health appointed by the commissioner of health; one member shall be an employee of the Texas Department of Mental Health and Mental Retardation appointed by the Commissioner of Mental Health and Mental Retardation; one member shall be an employee of the Texas Department of Criminal Justice appointed by the executive director of the Texas Department of Criminal Justice; one member shall be an employee of the Texas Youth Commission appointed by the executive director of the Texas Youth Commission; one member shall be an employee of the Texas Department of Human Services appointed by the Commissioner of Human Services; one member shall be an employee of the Center for Rural Health Initiatives appointed by the executive director of the Center for Rural Health Initiatives; one member shall be appointed by the Family Practice Residency Advisory Committee; one member who is a physician in private practice in a rural, underserved area of the state shall be appointed by the governor; and one member shall be appointed by the Texas Association of Community Health Centers.

(2) Members of the committee serve staggered terms of six years with the terms of one-third of the members expiring on February 1 of each odd-numbered year.

(3) The members shall elect annually the chair from among the members.

(4) The committee shall meet at least annually and as requested by the board or called into meeting by the chair.

(5) The committee shall review and recommend to the board the rules, guidelines, or procedures relating to this subchapter or any changes therein and perform any other duties related to the program as directed by the board or the chair of the committee.

(6) A member of the committee is not entitled to compensation but may be reimbursed for travel and other necessary expenses incurred in performing official duties at the same rate provided for members of state boards and commissions in the General Appropriations Act.

SECTION 4. Subsection (a), Section 61.537, Education Code, is amended to read as follows:

(a) On the recommendation of the Physician Loan Repayment Advisory Committee, the [The] coordinating board shall adopt rules necessary for the administration of this subchapter, including a rule that sets a maximum amount of repayment assistance that may be received by a physician in one year.

SECTION 5. The initial members of the committee shall be appointed as follows:

(1) the members appointed by the commissioner of health, the Commissioner of Mental Health and Mental Retardation, and the executive director of the Texas Department of Criminal Justice shall be appointed to terms expiring February 1, 1993;

(2) the members appointed by the executive director of the Texas Youth Commission, the Commissioner of Human Services, and the executive director of the Center for Rural Health Initiatives shall be appointed to terms expiring February 1, 1995; and

(3) the members appointed by the Family Practice Residency Advisory Committee, the governor, and the Texas Association of Community Health Centers shall be appointed to terms expiring February 1, 1997.

(2) Renumber SECTIONS 3 and 4 as 6 and 7.

JOHNSON
CARRIKER

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Johnson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 1004 ON THIRD READING

Senator Johnson moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that H.B. 1004 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

(Senator Ellis in Chair)

SENATE RESOLUTION 804

Senator Montford offered the following resolution:

S.R. 804, Extending best wishes to B. L. Parker on the occasion of his 60th birthday.

The resolution was read.

On motion of Senator Sims and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

On motion of Senator Montford, the resolution was adopted by a viva voce vote.

HOUSE BILL 2769 ON SECOND READING

On motion of Senator Truan and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2769, Relating to bailiffs for certain courts.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 2769 ON THIRD READING

Senator Truan moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that H.B. 2769 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

GUESTS PRESENTED

Senator Armbrister was recognized and introduced a group of fourth grade students from Spicewood Elementary School.

The Senate welcomed these guests.

HOUSE BILL 2812 ON SECOND READING

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2812, Relating to the presiding judge of the municipal courts of record in Austin.

The bill was read second time.

(President in Chair)

Senator Barrientos offered the following amendment to the bill:

Amend **H.B. 2812** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Section 30.324 (e), Government Code, is amended to read as follows:

(e) The presiding municipal judge has the administrative powers and duties specified by municipal charter or ordinance and shall:

- (1) maintain a central docket for cases filed within the territorial limits of the city over which the courts have jurisdiction;
- (2) provide for the distribution of cases from the central docket to the individual municipal judges to equalize the distribution of business in the courts;
- (3) call the jury docket and request the jurors needed for cases that are set for trial by jury; and
- (4) temporarily assign judges or relief judges to necessary for the expeditious disposition of business in the courts.

SECTION 2. Prior to the adoption of an ordinance under this Act, the governing body of the City of Austin shall request the Travis County Bar Association to conduct a study of the administrative structure of the Austin Municipal Court, the salaries, powers, and duties of its judges, including its presiding municipal judge. The study shall be conducted by a committee appointed by the President of the Travis County Bar Association, and shall be chaired by the judge of the 147th Judicial District. The committee shall include a judge of the county courts at law of Travis County, a justice of the peace of Travis County, and a municipal judge other than the presiding judge, a member of the Austin Police Association, and a representative group of attorneys who practice before the Austin Municipal Court. At least one third of the members of the committee shall not be attorneys, but shall be representatives of the public. No ordinance may be adopted under this Act until recommendations are made to the governing body of the City of Austin by the committee created by this Section.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Barrientos and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2812 ON THIRD READING

Senator Barrientos moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that H.B. 2812 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

COMMITTEE SUBSTITUTE HOUSE BILL 341 ON SECOND READING

On motion of Senator Green and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 341, Relating to the election from single-member districts and the terms of the governing body of a municipality with a population of 1.5 million or more.

The bill was read second time and was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 341 ON THIRD READING

Senator Green moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that C.S.H.B. 341 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Henderson.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1. (Same as previous roll call)

COMMITTEE SUBSTITUTE SENATE BILL 1184 ON SECOND READING

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

C.S.S.B. 1184, Relating to the designation of and tax incentives for an enterprise zone or enterprise project.

The bill was read second time.

Senator Zaffirini offered the following amendment to the bill:

Amend C.S.S.B. 1184 by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Subsection (a), Section 3, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) In this Act:

(1) "Administrative authority" means a board, commission, or committee appointed by a governing body to administer this Act in a local enterprise zone.

(2) "Day" means the period of time between 8 a.m. and 5 p.m. on any day other than a Saturday, Sunday, or state or federal holiday.

(3) "Department" means the Texas Department of Commerce.

(4) ~~[(3)]~~ "Depressed area" means an area within the jurisdiction of a county or municipality designated by ordinance or order ~~[or resolution]~~ and that meets the criteria set by this Act.

(5) ~~[(4)]~~ "Economically disadvantaged individual" means an individual who:

(A) for at least ~~three~~ six months before obtaining employment with a qualified business was unemployed; ~~or~~

(B) ~~receives~~ received public assistance benefits, such as welfare payments and food stamp payments, based on need and intended to alleviate poverty; ~~or~~

(C) is an economically disadvantaged individual, as defined by Section 4(8), Job Training Partnership Act (29 U.S.C. Section 1503(8));

(D) is an individual with handicaps, as defined by 29 U.S.C. Section 706(8); or

(E) is an individual who is an inmate, as defined by Section 497.001, Government Code, or who is entering the workplace after being confined in a unit of the institutional division of the Texas Department of Criminal Justice or a correctional facility authorized by Chapter 494, Government Code. ~~[For purposes of this subdivision, an individual is unemployed if the individual is not employed and has exhausted all unemployment benefits, whether or not the individual is actively seeking employment.]~~

(6) ~~[(5)]~~ "Enterprise project" means a qualified business designated by the department as an enterprise project under Section 10 of this Act that is eligible for the state tax incentives provided by law for an enterprise project.

(7) ~~[(6)]~~ "Enterprise zone" means an area of the state designated by the department as an enterprise zone under Section 9 of this Act.

(8) ~~[(7)]~~ "Governing body" with respect to an enterprise zone means the governing body of a municipality or county that has applied to have an area within its jurisdiction designated as an enterprise zone.

(9) ~~[(8)]~~ "Neighborhood enterprise association" means a private sector neighborhood organization within an enterprise zone that meets the criteria set by this Act.

(10) ~~[(9)]~~ "New permanent job" means a new employment position that is:

(A) created by a qualified business that has provided employment to a qualified employee of at least 1,040 hours annually; and

(B) intended to be an employment position retained during the period the business is designated as an enterprise project.

(11) ~~[(10)]~~ "Qualified business" means a person, including a corporation or other entity, that the department, for purposes of state benefits under this Act, and a governing body, for purposes of local benefits, certifies to have met the following criteria:

(A) the person is engaged in or has provided substantial commitment to initiate the active conduct of a trade or business in the zone; and

(B) at least 25 percent of the business's new employees in the zone are residents of any zone within the governing body's or bodies' jurisdiction or economically disadvantaged individuals; ~~and~~

~~[(C) if a business that is already active within the enterprise zone at the time it is designated and that operates continuously after that~~

time, the business has hired residents of any zone within the governing body's or bodies' jurisdiction or economically disadvantaged workers after the designation so that those individuals constitute at least 25 percent of the business's new or additional employees in the zone].

(12) [(11)] "Qualified employee" means an employee who works for a qualified business and who performs at least 50 percent of his service for the business within the enterprise zone.

(13) [(12)] "Qualified property" means:

(A) tangible personal property located in the zone that was acquired by a taxpayer not earlier than the 90th day before the date of [after] designation of the area as an enterprise zone and was used predominantly by the taxpayer in the active conduct of a trade or business;

(B) real property located in a zone that:

(i) was acquired by the taxpayer not earlier than the 90th day before the date of [after] designation of the zone and used predominantly by the taxpayer in the active conduct of a trade or business; or

(ii) was the principal residence of the taxpayer on the date of the sale or exchange; or

(C) interest in a corporation, partnership, or other entity if, for the most recent taxable year of the entity ending before the date of sale or exchange, the entity was a qualified business.

SECTION 2. Subsections (a), (b), and (d), Section 4, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) An area of a municipality, county, or combination of these local governments may be designated as an enterprise zone if it:

(1) has a continuous boundary;

(2) is at least one square mile in size but does not exceed the larger of the following:

(A) 10 square miles (exclusive of lakes, [and] waterways, and transportation arteries); or

(B) five percent of the area of the municipality, county, or combination of municipalities or counties nominating the area as an enterprise zone, but not more than 20 square miles (exclusive of lakes, [and] waterways, and transportation arteries);

(3) has been nominated as an enterprise zone in an ordinance or order [a resolution] adopted by the legislative body of the applicable municipality, county, or combination of municipalities or counties; and

(4) is an area with:

[(A)] pervasive poverty, unemployment, and economic distress; or

[(B)] ~~designated a rural area as defined by Section 481.085 of Chapter 481, Government Code~~.

(b) An area is an area of pervasive poverty, unemployment, and economic distress if the average rate of unemployment in the area during the most recent 12-month period for which data is available was at least one and one-half times the local, state, or national average for that period or if the area has had at least a nine percent population loss during the most recent six-year period or an annualized population loss of at least three [1-1/2] percent for the most recent three-year [six-year] period and the area meets one or more of the following criteria:

(1) the area was a low-income poverty area [according to the most recent federal census];

(2) the area is in a jurisdiction or pocket of poverty eligible for urban development action grants under federal law, according to the most recent

certification available from the United States Department of Housing and Urban Development;

(3) at least 70 percent of the residents or households of the area have an income below 80 percent of the median income of the residents or households of the locality or state, whichever is lower; or

(4) the nominating government establishes to the satisfaction of the department that [either]:

(A) chronic abandonment or demolition of commercial or residential structures exists in the area; [or]

(B) substantial tax arrearages for commercial or residential structures exist in the area;

(C) substantial losses of businesses or jobs exist in the area; or

(D) the area is part of a disaster area declared by the state or federal government during the most recent 18-month period.

(d) If an enterprise zone has been lawfully designated, the original nominating governing body or bodies, by ordinance or order, as appropriate, [resolution] adopted following public hearing, may amend the original boundaries subject to the following limitations:

(1) the boundaries as amended must not exceed the original size limitations and boundary requirements set by this Act and may not exclude any part of the zone within the boundaries as originally designated;

(2) the enterprise zone must continue to meet all unemployment and economic distress criteria throughout the zone as required by this Act; [and]

(3) the governing body or bodies may not make more than one boundary amendment annually during the zone designation period; and

(4) the governing body or bodies must pay for each amendment a reasonable fee in an amount not to exceed \$500 specified by the department [the life of the zone].

SECTION 3. Subsections (a) and (b), Section 5, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) The governing body of any municipality, county, or combination of these local governments may nominate by ordinance or order, as appropriate, [resolution] any economically distressed area within its jurisdiction as a potential enterprise zone, if the area meets the criteria established in Section 4 of this Act. The municipality, county, or combination of these local governments may then make written application to the department to have the area designated [certified] as an enterprise zone.

(b) An ordinance or order [A resolution] adopted by a governing body under this section is not valid unless the governing body holds a public hearing to consider the ordinance or order [resolution] before the ordinance or order [resolution] is adopted.

SECTION 4. Section 6, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. REQUIREMENTS OF RESOLUTION NOMINATING ZONE. (a) An ordinance or order [A resolution] nominating an area as an enterprise zone must set forth:

(1) a precise description of the area comprising the zone, either in the form of a legal description or by reference to roadways, lakes and waterways, and municipal or county boundaries;

(2) a finding that the zone area meets the qualifications of this Act;

(3) a brief summary of provisions for any tax or other incentives applicable to business enterprises in the zone at the election of the designating municipality or county, at least one of which is not applicable throughout the municipality or county; and

(4) a designation of the area as an enterprise zone, subject to the approval of the department in accordance with this Act.

(b) This section does not prohibit a municipality or county from extending additional tax or other incentives for business enterprises in an enterprise zone by separate ordinance or order ~~[resolution]~~.

SECTION 5. Subsection (b), Section 7, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The application must include:

(1) a certified copy of the ordinance or order, as appropriate, ~~[resolution]~~ nominating the proposed zone;

(2) a map of the proposed enterprise zone showing existing streets and highways;

(3) an analysis and any appropriate supporting documents and statistics demonstrating that the proposed zone area qualifies for designation as an enterprise zone;

(4) a statement detailing any tax, grant, and other financial incentives or benefits and any programs to be provided by the municipality or county to business enterprises in the zone~~[-other than those provided in the designating ordinance;]~~ that are not to be provided throughout the municipality or county;

(5) a statement setting forth the economic development and planning objectives for the zone;

(6) a statement describing the functions, programs, and services to be performed by designated neighborhood enterprise associations in the zone;

(7) an estimate of the economic impact of the zone, considering all of the tax incentives, financial benefits, and programs contemplated, on the revenues of the municipality or county;

(8) a transcript or tape recording of all public hearings on the zone;

(9) in the case of a joint application, a description and copy of the agreement between joint applicants;

(10) procedures for negotiating with residents, community groups, and other affected entities ~~[communities impacted]~~ by the zone and with qualified businesses in the zone;

(11) a description of the administrative authority, if any, created for the zone; and

(12) any ~~[the]~~ additional information that the department requires.

SECTION 6. Subsection (a), Section 9, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) On receipt of an application from a municipality, county, or combination of these local governments, the department shall review the application to determine if the area described in the application qualifies to be designated as an enterprise zone under the criteria of Section 4 of this Act. The department shall provide an applicant at least 10 days ~~[two weeks]~~ after the date of receipt of the application to correct any omissions or clerical errors that may be present in the application and to return the application to the department. Following the close of the application period and the resubmission period, if any, the department shall meet to review the applications that have qualified for consideration as enterprise zones.

SECTION 7. Subsection (b), Section 9, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), as amended by Section 1, Chapter 471, and Section 7, Chapter 1106, Acts of the 71st Legislature, Regular Session, 1989, is reenacted to reconcile those amendments to read as follows:

(b) Not later than the 60th day after the last day of each fiscal year, the comptroller shall furnish to the department a report stating the statewide total of the tax refunds made under Section 17 of this Act during the fiscal year.

SECTION 8. Subsections (a), (b), (c), and (k), Section 10, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) A qualified business in an enterprise zone having an unemployment rate of not less than one and one-half times the state average, a population loss of at least 12 percent during the most recent six-year period, or an annualized population loss of at least four [two] percent for the most recent three-year [six-year] period may apply to the governing body or combination of governing bodies that nominated the enterprise zone and to the administrative authority, if any, for designation as an enterprise project. If the governing body or bodies and administrative authority agree, the governing body or bodies may apply to the department to designate the business as an enterprise project.

(b) The application to the department must include:

(1) a complete description of the conditions in the zone that constitute pervasive poverty, unemployment, and economic distress for purposes of Subsection (b) of Section 4 of this Act;

(2) a description of each municipality's or county's procedures and efforts to facilitate and encourage participation by and negotiation between all affected entities in the zone in which the qualified business is located;

(3) an economic analysis of the plans of the qualified business for expansion, revitalization, or other activity in the zone, including the anticipated number of new permanent jobs it will create, the anticipated number of permanent jobs it will retain, the amount of investment to be made in the zone, and other information that the department requires; and

(4) a description of the local effort made by the municipality or county, the administrative authority, the qualified business, and other affected entities to achieve development and revitalization of the zone.

(c) The department may not designate a nominated qualified business as an enterprise project unless it determines that:

(1) the qualified business is located in or has made a substantial commitment to locate in an enterprise zone having an unemployment rate of not less than one and one-half times the state unemployment rate, or a population loss of at least 12 percent during the most recent six-year period, or an annualized population loss of at least four [two] percent for the most recent three-year [six-year] period;

(2) the applicant governing body or bodies have demonstrated that a high level of cooperation between public, private, and neighborhood entities exists in the zone; and

(3) the designation of the qualified business as an enterprise project will contribute significantly to the achievement of the plans of the applicant governing body or bodies for development and revitalization of the zone.

(k) The number of enterprise projects that have not been designated before the end of each state fiscal year may be designated in subsequent fiscal years, except that an enterprise project may not be designated after August 31, 1993 [1994]. Enterprise projects designated after August 31, 1991, may not apply for refund of state sales and use taxes until after August 31, 1993.

SECTION 9. Subsections (b) through (e), Section 12, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), as amended by Section 2, Chapter 471, and Section 11, Chapter 1106, Acts of the 71st Legislature, Regular Session, 1989, are reenacted to reconcile those amendments to read as follows:

(b) In addition to the program authorized by Subsection (a) of this section, to promote the public health, safety, or welfare, the governing body of a municipality or county may establish a program to refund its local sales and use taxes paid by a qualified business or qualified employee.

(c) The governing body of a municipality or county that nominated an enterprise zone designated by the department may provide for the partial or total refund of its local sales and use taxes paid by a person making a taxable purchase, lease, or rental for purposes of development or revitalization in the zone.

(d) A qualified business, qualified employee, or person entitled to a refund of local sales and use taxes under this section shall pay the entire amount of state and local sales and use taxes at the time they would otherwise be due without reduction because of any agreement with a municipality or county for the refund of local sales and use taxes.

(e) Any agreement to refund local sales and use taxes under this section must be in writing, contain an expiration date, and require the beneficiary to provide documentation necessary to support a refund claim to the municipality or county granting the refund. The municipality or county granting a refund shall make the refund directly to the beneficiary in the manner set out in the agreement.

SECTION 10. Section 13, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), as amended by Section 3, Chapter 471, and Section 12, Chapter 1106, Acts of the 71st Legislature, Regular Session, 1989, is reenacted to reconcile those amendments to read as follows:

Sec. 13. REDUCTION OR ELIMINATION OF FEES AND TAXES. To promote the public health, safety, or welfare, the governing body of a municipality or county may establish a program by which it reduces or eliminates any fees or taxes, other than sales and use or property taxes, that it imposes on a qualified business or qualified employee. The governing body of a municipality or county may not reduce or eliminate local sales and use taxes except to the extent it grants a refund under Section 12 of this Act.

SECTION 11. Section 14, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 14. OTHER LOCAL INCENTIVES. The governing body of a municipality or county that nominated an enterprise zone designated by the department may:

(1) defer compliance in the zone with subdivision and development ordinances and regulations, other than those governing streets and roads or sewer or water services;

(2) give priority to the zone for the receipt of urban development action grant money, community development block grant money, industrial revenue bonds, or funds received under the Texas Job-Training Partnership Act (Article 4413(52), Vernon's Texas Civil Statutes);

(3) adopt and implement a plan for police protection in the zone;

(4) amend zoning ordinances to promote economic development in the zone;

(5) establish preferences for businesses in the zone in permit processes;

(6) establish simplified, accelerated, or other special permit procedures for businesses in the zone;

(7) waive development fees for projects in the zone;

(8) create a local enterprise zone fund for funding bonds or other programs or activities to develop or revitalize the zone;

(9) reduce utility rates for qualified businesses in the zone charged by:

(A) utilities owned by the municipality or county; or

(B) subject to agreement of the affected utility and the approval of the appropriate regulatory authority under Sections 16 and 17, Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), by a cooperative or a utility owned by private investors except that rates of the utility for qualified businesses in the zone may not be reduced more than five percent and the

appropriate regulatory authority in setting the rates of the utility shall allow the utility to recover the amount of the reduction;

(10) give priority to persons or projects in the zone in issuing housing finance bonds; ~~or~~

(11) give priority in providing services to local economic development, educational, job training, or transportation programs that benefit the zone; or

(12) sell real property owned by the municipality or county and located in the enterprise zone in accordance with Section 20 of this Act.

SECTION 12. Subsection (e), Section 15, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), is amended to read as follows:

(e) Each state agency rule adopted after September 1, 1987, when applicable, may provide encouragements and incentives to increase rehabilitation, renovation, restoration, improvement, or new construction of housing and to increase the economic viability and profitability of business and commerce in enterprise zones. In addition, each state agency annually shall review the rules it administers that may negatively impact the rehabilitation, renovation, restoration, improvement, or new construction of housing or the economic viability and profitability of business and commerce in enterprise zones, or that may otherwise affect the implementation of this Act, and shall report the results of each review to the department. The department shall disseminate the reports to enterprise zone governing bodies and others as necessary to advance the purposes of this Act. An agency may take the necessary steps to waive, modify, create exemptions to, or otherwise minimize the adverse effects of those rules on the rehabilitation, renovation, restoration, improvement, or new construction of housing or the economic viability and profitability of business and commerce located in enterprise zones and contribute to the implementation of this Act.

SECTION 13. Subsection (b), Section 18, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The state treasurer is authorized and encouraged to deposit state money in financial institutions located in or doing business in enterprise zones.

SECTION 14. Subsection (b), Section 20, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) In addition to the methods of disposal provided in Subsection (a), a [A] municipality or county may sell a surplus building or vacant land in the zone at less than fair market value if the governing body of the municipality by ordinance or the governing body of the county by order adopts criteria specifying the conditions and circumstances under which the sale may occur and the public purpose that will be achieved. The surplus building or vacant land may be sold to a buyer who is not the highest bidder if the criteria and public purpose specified in the ordinance or order are satisfied. A copy of the ordinance or order must be filed with the department not later than the day the sale occurs.

SECTION 15. (a) Subsections (b) and (c), Section 151.429, Tax Code, are amended to read as follows:

(b) Subject to the limitations provided by Subsection (c) of this section, an enterprise project qualifies for a refund of taxes under this section of \$2,000 for each new permanent job that the enterprise project provides for a qualified employee during the period of its designation as an enterprise project.

(c) In this section, "enterprise project," "enterprise zone," "new permanent job," and "qualified employee" have the meanings assigned to those terms by Section 3, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes).

(b) Subsection (f), Section 151.429, Tax Code, as added by Section 22, Chapter 1106, Acts of the 71st Legislature, Regular Session, 1989, is repealed.

SECTION 16. Section 171.1015, Tax Code, is amended to read as follows:

Sec. 171.1015. FRANCHISE TAX REFUNDS FOR ENTERPRISE PROJECTS [REDUCTION OF TAXABLE CAPITAL FOR INVESTMENT IN AN ENTERPRISE ZONE]. (a) A qualified business [corporation] that has been designated as a state [an] enterprise project as provided by the Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes) may apply for and be granted a refund of 50 percent of the franchise tax paid with an initial or annual report for each [~~deduct from its taxable capital allocated to this state 50 percent of its capital investment in the enterprise zone in which the enterprise project is located. The deduction may be taken on each franchise tax report that is based on a corporation's~~] fiscal year during all or part of which the qualified business [corporation] is an enterprise project.

(b) The refund [~~deduction~~] authorized by this section is limited to 50 percent of the franchise taxes paid based on the depreciated value of capital equipment or other investment that qualifies for depreciation for federal income tax purposes and that is placed in service in the zone after designation as an enterprise project. The depreciated value must be computed by a method which is otherwise acceptable for that qualified business's [corporation's] franchise tax report and must be computed for each report on which it is taken by the same method of depreciation.

(c) To qualify for a refund [~~the deduction~~] authorized by this section, an investment must be used in the normal course of business in the enterprise zone and must not be removed from the enterprise zone, except for repair or maintenance. Qualifying use and presence in the zone must occur during the accounting year of the report on which the refund [report] is based.

(d) To receive a refund under this section, an enterprise project must apply to the comptroller for the refund. The Texas Department of Commerce shall provide the comptroller with the assistance that the comptroller requires in administering this section. Enterprise projects designated after August 31, 1991, may not be granted a refund under this section until after August 31, 1993. The refund [~~deduction~~] authorized by this section may not be used to reduce the tax paid [taxable capital] below \$68 [a zero value and no carryover of unused deductions to a later privilege period is allowed].

(e) In this section, "enterprise project" and "enterprise zone" have the meanings assigned to those terms by Section 3, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes).

SECTION 17. Subsections (a) and (e), Section 171.501, Tax Code, are amended to read as follows:

(a) A corporation that has been certified a qualified business as provided by the Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes) may apply for and be granted a refund of franchise tax paid with an initial or annual report if the governing body or bodies certify to the Texas Department of Commerce that the business has created 10 or more new permanent jobs in its enterprise zone held by qualified employees during the calendar year that contains the end of the accounting period on which the report is based. The Texas Department of Commerce shall certify eligibility for any refund to the comptroller.

(e) In this section, "enterprise zone," "governing body," "new permanent job," "qualified business," and "qualified employee" have the meanings assigned to those terms by Section 3, Texas Enterprise Zone Act (Article 5190.7, Vernon's Texas Civil Statutes).

SECTION 18. This Act takes effect September 1, 1991.

SECTION 19. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Zaffirini and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 1184 ON THIRD READING**

Senator Zaffirini moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that C.S.S.B. 1184 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 653 ON SECOND READING

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 653, Relating to the length of time a child found to have engaged in delinquent conduct may be sentenced to commitment to the Texas Youth Commission with a transfer to the Texas Department of Criminal Justice.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 653 ON THIRD READING

Senator Armbrister moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **H.B. 653** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 1985 ON SECOND READING

On motion of Senator Dickson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1985, Relating to participation and credit in the Texas County and District Retirement System.

The bill was read second time.

Senator Dickson offered the following amendment to the bill:

Amend **H.B. 1985** as follows:

(1) Strike all of Section 3. Renumber the remaining Sections appropriately.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Dickson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 1985 ON THIRD READING

Senator Dickson moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **H.B. 1985** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

MESSAGE FROM THE HOUSE

House Chamber
May 24, 1991

HONORABLE BOB BULLOCK
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

H.C.R. 251, Honoring Billie Chapman.

H.C.R. 234, Requesting the United States Congress to resolve questions regarding United States military prisoners of war and personnel missing in action by appointing a select committee to assist the United States Senate Foreign Relations Committee in obtaining information in government files.

Respectfully submitted,

BETTY MURRAY, Chief Clerk
House of Representatives

**COMMITTEE SUBSTITUTE
HOUSE BILL 7 ON SECOND READING**

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 7, Relating to the administration of, benefits payable by, and credit established in the Teacher Retirement System of Texas.

The bill was read second time.

Senator Brooks offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 7** by striking everything below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Effective September 1, 1991, Section 824.002(d), Government Code, is amended to read as follows:

(d) A person who works not later than June 15 of a year in order to complete all work required for the school year may be considered to have ended employment on May 31 of that year for the purposes of Subsections ~~(a)(3)~~ and ~~(b)(2)~~.

SECTION 2. Effective September 1, 1992, Section 824.302, Government Code, is amended to read as follows:

Sec. 824.302. ELIGIBILITY FOR DISABILITY RETIREMENT. A member is eligible to retire and receive a disability retirement annuity if the member:

(1) is mentally or physically disabled from the further performance of duty [is certified by the medical board as disabled as provided by Section 824.303(b)]; and

(2) the disability is probably permanent [does not satisfy the age and service requirements under Section 824.202(a) for a service retirement annuity without reduction].

SECTION 3. Effective September 1, 1992, Section 824.304(b), Government Code, is amended to read as follows:

(b) If a member has a total of at least 10 years of service credit in the retirement system on the date of disability retirement [but is not eligible for service retirement without reduction of benefits], the retirement system shall pay the person for the duration of the disability a disability retirement annuity in an amount equal to the greater of:

(1) a standard service retirement annuity computed under Section 824.203(a) [on the basis of the amount of the person's service credit on the date of retirement]; or

(2) \$6.50 a month for each year of service credit on the date of retirement.

SECTION 4. Effective September 1, 1992, Sections 824.307(a) and (b), Government Code, are amended to read as follows:

(a) If the medical board finds that a disability retiree [who is less than 60 years old] is no longer mentally or physically incapacitated for the performance of duty, it shall certify its findings and submit them to the board of trustees.

(b) If a disability retiree [who is less than 60 years old] is restored to active service, other than service described by Section 824.602(a)(1), or refuses for more than one year to submit to a required medical examination, or if the board of trustees concurs in a certification issued under Subsection (a), the board shall discontinue the retiree's annuity payments and the retiree must again become a member of the retirement system.

SECTION 5. Effective September 1, 1992, Subchapter D, Chapter 824, Government Code, is amended by adding Section 824.308 to read as follows:

Sec. 824.308. OPTIONAL DISABILITY RETIREMENT BENEFITS. (a) Instead of an annuity payable under Section 824.304(b), a member retiring under that section may elect to receive an optional disability retirement annuity under this section.

(b) An optional disability retirement annuity is an annuity payable throughout the disability of the disability retiree and is actuarially reduced from the annuity otherwise payable under Sections 824.304(b)(1) and (b)(2) to its actuarial equivalent under the option selected under Subsection (c).

(c) An eligible member may select one of the following options:

(1) after the disability retiree's death, the reduced annuity is payable throughout the life of a person nominated by the retiree's written designation under Section 824.101 filed before retirement;

(2) after the disability retiree's death, one-half of the reduced annuity is payable throughout the life of the retiree's designated beneficiary;

(3) if the disability retiree dies before 60 monthly annuity payments have been made, the remainder of the 60 payments are payable to the designated beneficiary; or

(4) if the disability retiree dies before 120 monthly annuity payments have been made, the remainder of the 120 payments are payable to the designated beneficiary.

(d) If the person nominated by a disability retiree's written designation under Section 824.101 filed before retirement predeceases the disability retiree, the reduced annuity of a disability retiree who has elected an optional retirement

annuity under Subsection (c)(1) or (2) is increased to the standard retirement annuity that the disability retiree would otherwise be entitled to receive if the disability retiree had not selected an annuity option. The standard retirement annuity shall be adjusted as appropriate for postretirement increases in retirement benefits authorized by law after the date of retirement.

(e) The increase in the annuity under Subsection (d) begins with the first monthly payment made to the disability retiree after the date of death of the designated beneficiary and is payable to the disability retiree for the remainder of the disability retiree's disability.

(f) The board of trustees shall adopt separate tables to be used to reduce an optional disability retirement annuity under this section to the actuarial equivalent of the standard retirement annuity.

(g) The continued payment to a disability retiree and the future payment to the retiree's designated beneficiary of any disability benefit, including an optional payment elected under Subsection (c), are conditioned on the continuation of the retiree's disabled status until the date of the retiree's death.

(h) The same requirements and limitations that apply to the designation or changing of beneficiaries for service retirement annuity options, including Section 824.101, apply to the designation of beneficiaries for disability retirement options.

SECTION 6. Effective September 1, 1992, Section 824.501, Government Code, is amended to read as follows:

Sec. 824.501. SURVIVOR BENEFITS. (a) The designated beneficiary of a service or disability retiree who dies while receiving a service or disability retirement benefit may elect to receive:

(1) a lump-sum payment of \$2,500 plus an applicable monthly benefit under Section 824.404; or

(2) a lump-sum benefit of \$10,000.

(b) An eligible person may receive benefits under [both] this section, [and] Section 824.204, and Section 824.308.

SECTION 7. Effective September 1, 1992, Section 824.502, Government Code, is amended to read as follows:

Sec. 824.502. BENEFITS ON DEATH OF DISABILITY RETIREE. The designated beneficiary of a disability retiree who retires before September 1, 1992, and who dies while receiving a retirement benefit may elect to receive, instead of survivor benefits provided by Section 824.501, a benefit available under Section 824.402, computed as if the decedent had been in service at the time of death.

SECTION 8. Section 824.503, Government Code, is amended by adding Subsection (f) to read as follows:

(f) The designated beneficiary of a disability retiree is eligible to receive the benefits described by this section if the retiree:

(1) retires on or after September 1, 1992; and

(2) dies while receiving disability retirement benefits under Section 824.304(b).

SECTION 9. Effective August 31, 1991, Section 824.602, Government Code, is amended to read as follows:

Sec. 824.602. EXCEPTIONS. (a) The retirement system may not, under Section 824.601, withhold a monthly benefit payment if the retiree is employed in a Texas public educational institution:

(1) as a substitute only with pay not more than the daily rate of substitute pay established by the employer, if the employment has not exceeded a total of 120 days in the school year or, for a disability retiree, 90 days in the school year;

(2) in a position, other than as a substitute, on no more than a one-half time basis for the month; or

(3) in one or more positions on as much as a full-time basis, if:
 (A) the work occurs in a school year that begins after the retiree's effective date of retirement;

(B) the work occurs in ~~[a period, designated by the retiree, of]~~ no more than six ~~[five consecutive]~~ months ~~[between September and June]~~ of the school year; and

(C) the retiree executes on a form and within any deadline prescribed by the retirement system a written election to have this exception apply for the school year in determining whether benefits are to be suspended for employment after retirement[;]

~~[(D) there is a prospective employer who endorses the retiree's election with a certification that the contemplated employment after retirement is in the best interests of the employer;~~

~~[(E) the election form is executed on or before the retiree's last day of the first month of employment under the election during the school year; and~~

~~[(F) the retiree has not been previously employed during the school year in a Texas public educational institution in a position described in Subdivision (1) or (2)].~~

(b) Working as a substitute any portion of a day counts as working a full day for the purposes of Subsection (a)(1).

(c) Working any portion of a month counts as working a full month for the purposes of Subsection (a)(3).

(d) A retiree who has elected to avoid loss of monthly benefits in a school year pursuant to Subsection (a)(3) is not eligible during that school year for any other exceptions to loss of benefits provided in this section. If a retiree elects the exemption provided in Subsection (a)(3) for a school year, the retirement system must include any previous employment during the school year, including any employment that relied upon the exemptions in Subsection (a)(1) or (a)(2), in determining whether and when the retiree has exceeded six months of employment in the school year.

(e) ~~[(d)]~~ A retiree working as a substitute in a month is not eligible for an exception to a loss of benefits for that month pursuant to Subsection (a)(2) for that or any other employment in a public educational institution.

(f) ~~[(e)]~~ The exceptions provided by Subsections (a)(2) and (a)(3) do not apply to disability retirees. The retirement system nevertheless may not withhold a monthly benefit payment under Section 824.601 if:

(1) a disability retiree is employed in a Texas public educational institution in a position, other than as a substitute, for a period not to exceed three consecutive months of the school year;

(2) the work occurs in a period, designated by the disability retiree, of no more than three consecutive months of a school year;

(3) the disability retiree executes on a form and at a time prescribed by the retirement system a written election to have this exception apply on a one-time trial basis in determining whether benefits are to be suspended for the months of employment after retirement and in determining whether a disability retiree is no longer mentally or physically incapacitated for the performance of duty; and

(4) the disability retiree has not previously elected to avoid loss of monthly benefits in a school year under this subsection.

(g) A disability retiree is not entitled to service credit for service during a trial period under Subsection (f) if the retiree is restored to active service.

(h) ~~[(f)]~~ Section 824.005(b), concerning revocation of retirement on certain reemployment, applies to employment described in Subsection (a) or (f).

(i) [(g)] The board of trustees shall adopt rules governing the employment of a substitute and defining "one-half time basis."

(j) [(h)] The actuary designated by the board of trustees shall, in investigating the experience of the members of the system, note any significant increase in early age retirements and determine the extent to which any increase has been caused by the exception to loss of benefits for employment after retirement provided by Subsection (a)(3). If the actuary certifies in writing to the retirement system that sound actuarial funding of the retirement system's benefits is endangered by continuation of this exception, the board of trustees may determine that no further elections of the exception will be accepted from retirees, other than from those who have previously relied on the exception in retiring under this subtitle. A retiree may be considered to have relied on this exception only if retirement occurred on or after May 31, 1985, but before the date the board of trustees acknowledges receipt of such certification and if the retiree has first elected to receive benefits under the exception not later than two years after the retiree's effective date of retirement.

SECTION 10. Subchapter H, Chapter 824, Government Code, is amended by adding Section 824.702 to read as follows:

Sec. 824.702. COST OF LIVING ADJUSTMENTS. (a) Except as provided by Subsection (f), in fiscal years beginning after August 31, 1998, the retirement system shall make annual cost-of-living adjustments to the monthly payments of retirement or death benefit annuities, other than disability benefits for persons with less than 10 years of service credit or monthly payments of survivor benefits. The cost-of-living adjustment for each fiscal year may not exceed the lesser of three percent or one-half of the annual percentage increase in the Consumer Price Index for All Urban Consumers, or its equivalent, as determined by the United States government for the calendar year preceding the increase.

(b) The retirement system may not reduce benefits under this section.

(c) The board of trustees may adopt rules to implement this section.

(d) Not later than July 31, 1998, the board of trustees shall by rule determine:

(1) the minimum period following a retiree's date of retirement or a member's date of death, whichever is applicable, that will be required before annuitants become eligible for cost-of-living adjustments under this section; and

(2) whether the amount of each fiscal year's monthly cost-of-living adjustment will be computed by applying the adjustment percentage to:

(A) the initial monthly annuity payment; or

(B) the previous fiscal year's adjusted monthly annuity payment.

(e) The determinations made by the board of trustees under Subsection (d) must comply with Section 821.006.

(f) The board of trustees shall postpone the implementation of cost-of-living adjustments under Subsection (a) and defer the determination under Subsection (d) until the board, with the advice of its actuary, determines by rule that it can reasonably implement the cost-of-living adjustments without violating Section 821.006.

SECTION 11. Subchapter D, Chapter 825, Government Code, is amended by adding Section 825.3081 to read as follows:

Sec. 825.3081. COST-OF-LIVING RESERVE ACCUMULATION ACCOUNT. (a) Before August 31 of each year, the retirement system shall transfer from the state contribution account to a cost-of-living reserve accumulation account an amount equal to 75 percent of any net actuarial gain experienced by the system for the preceding fiscal year, as certified by the system's independent actuary in the system's annual actuarial evaluation report.

(b) On August 31 of each year, the retirement system shall transfer from the interest account to the cost-of-living reserve accumulation account interest equal

to the product of the average balance in the cost-of-living reserve accumulation account for the year multiplied by the percentage determined under Section 825.313(b)(2). Except as provided by Section 824.702(e), amounts in the cost-of-living reserve accumulation account may not be considered in actuarial valuations of the retirement fund, including any determination of the period for amortizing the retirement system's unfunded actuarial liabilities in accordance with Section 821.006.

(c) After the board of trustees makes the determinations regarding cost-of-living adjustments required by Section 824.702(d), the retirement system shall transfer the amounts in the cost-of-living reserve accumulation account to the state contribution account and the retired reserve account, as appropriate, and close the cost-of-living reserve accumulation account.

(d) This section expires on the later of September 1, 1998, or the date the board of trustees makes a determination under Section 824.702(f).

SECTION 12. Section 825.313, Government Code, is amended by adding Subsection (d) to read as follows:

(d) On August 31 of each year, the retirement system shall transfer from the interest account to the cost-of-living reserve accumulation account the amount specified in Section 825.3081(b). This subsection expires on the later of September 1, 1998, or the date the board of trustees makes a determination under Section 824.702(f).

SECTION 13. Subchapter F, Chapter 825, Government Code, is amended by adding Section 825.508 to read as follows:

Sec. 825.508. **PERSONAL REPRESENTATIVES.** (a) The retirement system may adopt rules for transacting business with a personal representative of a person entitled to payments or benefits under a program administered by the retirement system.

(b) The retirement system is not liable for payments made or other action taken as authorized by the personal representative in accordance with the rules adopted under this section even if the personal representative is not otherwise authorized by law to transact the business affairs of the person represented.

(c) The retirement system may not accept a retirement application or beneficiary designation by the personal representative.

SECTION 14. Effective September 1, 1992, Section 824.304(c), Government Code, is repealed.

SECTION 15. (a) Monthly payments of a death or retirement benefit annuity by the Teacher Retirement System of Texas are increased if the date of death or the latest effective date of retirement of the person on whose account the benefit is based occurred before May 1, 1989. The increase provided by this section does not apply to a survivor benefit or to a disability benefit for a person who had less than 10 years of service credit in the retirement system at the time of retirement or death. The amount of the increase is four-tenths of one percent for each full six-month period between the date of death of the person on whose account the benefit is based and August 26, 1991, or for each full six-month period between the latest effective date of retirement and August 26, 1991. An annuitant entitled to an increase under this section may not receive less than a total of a five percent increase in the annuity.

(b) The increase provided by this section begins with the payment due at the end of August 1991.

SECTION 16. (a) Except as provided by Sections 1, 2, 3, 4, 5, 6, 7, 9 and 11 of this Act, this Act takes effect August 26, 1991.

(b) Section 824.602, Government Code, as amended by this Act, applies only to employment on or after August 31, 1991, or to employment that is the subject of an action or proceeding contesting the need to withhold a monthly benefit that is pending before the retirement system on that date.

SECTION 17. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Dickson offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 2

Amend Floor Amendment No. 1 to C.S.H.B. 7 as follows:

(1) Insert the following section, appropriately numbered:

SECTION _____. (a) Section 825.406, Government Code, is amended by adding Subsection (h) to read as follows:

(h) In this section, "money provided by the United States" means money paid by the United States of America or a territory, possession, or agency of the United States of America through a federal grant or federal contract source.

(b) The change in law made by this section to Section 825.406, Government Code, which previously applied only to money received from grants, applies, as of the effective date of this Act, to grants and contracts executed on or after that date.

(2) Renumber subsequent sections of the bill appropriately.

The amendment to the amendment was read and was adopted by a viva voce vote.

Senator Krier offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 3

Amend Floor Amendment No. 1 to C.S.H.B. 7 by adding the following SECTION 17 and renumbering subsequent Sections accordingly:

SECTION 17. Subdivision (15), Section 821.001, Government Code, is amended to read as follows:

(15) "School year" means:

(A) a 12-month period beginning approximately September 1 and ending approximately August 31 of the next calendar year; or

(B) for a member whose employment contract begins after June 30 and continues after August 31 of the same calendar year, a period not to include more than 12 months beginning on the date the employment contract begins.

The amendment to the amendment was read and was adopted by a viva voce vote.

Question recurring on the adoption of Floor Amendment No. 1 as amended, the amendment as amended was adopted by a viva voce vote.

RECORD OF VOTES

Senators Montford, Sibley, Leedom and Bivins asked to be recorded as voting "Nay" on the adoption of the amendment.

On motion of Senator Brooks and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Montford, Sibley, Leedom and Bivins asked to be recorded as voting "Nay" on the passage of the bill to third reading.

**COMMITTEE SUBSTITUTE
HOUSE BILL 7 ON THIRD READING**

Senator Brooks moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that C.S.H.B. 7 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 3.

Yeas: Armbrister, Barrientos, Brooks, Brown, Carriker, Dickson, Ellis, Green, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Johnson, Krier, Lucio, Lyon, Moncrief, Montford, Parker, Ratliff, Rosson, Sims, Tejeda, Truan, Whitmire, Zaffirini.

Nays: Bivins, Leedom, Sibley.

Absent: Glasgow, Turner.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTES

Senators Montford, Sibley, Leedom and Bivins asked to be recorded as voting "Nay" on the final passage of the bill.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1822 ON SECOND READING**

On motion of Senator Sims and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1822, Relating to the composition of the board of directors of an underground water district and to the powers and duties of the district.

The bill was read second time.

Senator Sims offered the following amendment to the bill:

Amend **C.S.H.B. 1822** by deleting SECTION 1 and SECTION 2 in their entirety and adding a new SECTION 1 as follows:

In SECTION 1 of the bill, strike the added Section 52.1511, Water Code, and substitute the following:

Sec. 52.1511. LIMITATION ON RULE-MAKING POWER OF DISTRICTS OVER WELLS IN CERTAIN COUNTIES. Except as provided by Section 51.170 of this chapter, a district that is created under this chapter on or after September 1, 1991, shall exempt from regulation under this chapter a well and any water produced or to be produced by a well that is located in a county that has a population of 14,000 or less if the water is to be used solely to supply a municipality that has a population of 115,000 or less and the rights to the water produced or to be produced from the well are owned by a political subdivision that is not a municipality, or by a municipality that has a population of 93,000 or less, and that purchased, owned, or held rights to the water before the date on which the district was created, regardless of the date the well is drilled or the water is produced. The district may not prohibit the political subdivision or municipality from transporting produced water inside or outside the district's boundaries.

Renumber remaining SECTIONS accordingly.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Sims and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1822 ON THIRD READING**

Senator Sims moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that C.S.H.B. 1822 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTE

Senator Johnson asked to be recorded as voting "Nay" on the final passage of the bill.

RECORD OF VOTE

Senator Krier asked to be recorded as voting "Present-not voting" on the final passage of the bill.

**VOTE ON FINAL PASSAGE OF
COMMITTEE SUBSTITUTE HOUSE BILL 341 RECONSIDERED**

On motion of Senator Green and by unanimous consent, the vote by which C.S.H.B. 341 was finally passed was reconsidered.

Question—Shall C.S.H.B. 341 be finally passed?

Senator Green offered the following amendment to the bill:

Amend C.S.H.B. 341 as follows:

(1) On page 3, line 20, strike "41.02" and substitute "41.001".

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

On motion of Senator Green and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was again finally passed by the following vote: Yeas 30, Nays 1.

Nays: Henderson.

GUEST PRESENTED

Senator Ellis was recognized and introduced to the Senate Kathy Whitmire, Mayor of the City of Houston.

The Senate welcomed Mayor Whitmire.

HOUSE BILL 2252 ON SECOND READING

On motion of Senator Brown and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2252, Relating to the development of standards for interviewers and investigators in child abuse investigations.

The bill was read second time.

Senator Brown offered the following committee amendment to the bill:

Amend **H.B. 2252** by adding a new SECTION 3 and renumbering subsequent sections, as follows:

SECTION 3. Notwithstanding the authority granted by this Act, no state general revenue may be appropriated for costs related to the implementation of this Act during the fiscal biennium beginning on September 1, 1991 unless expressly authorized by the general appropriations act.

Further amend **H.B. 2252**, SECTION 2, after the words "August 31, 1992" as follows:

and copies of the standards shall be provided to the Legislature not later than September 15, 1992.

The committee amendment was read and was adopted by a viva voce vote.

Senator Brown offered the following amendment to the bill:

Amend **H.B. 2252** as follows:

(1) On lines 35 and 36 and line 62 strike the words "and the Texas Juvenile Probation Commission".

(2) On line 36 strike the word "jointly".

(3) On line 38 strike the word "Each" and replace it with the word "The".

Further amend **H.B. 2252** as follows:

(1) In Subsection (d)(2) of added Section 34.054, Family Code (page 1, line 58), strike "and".

(2) In Subsection (d)(3) of added Section 34.054, Family Code (page 1, line 60), strike the period and substitute "; and".

(3) In Subsection (d) of added Section 34.054, Family Code, insert (on page 1, between lines 60 and 61) a new Subdivision (4) to read as follows:

(4) recommend that an investigator of suspected child abuse make a reasonable effort to locate and inform each parent of a child of any report of abuse relating to the child.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Brown and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2252 ON THIRD READING

Senator Brown moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **H.B. 2252** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

GUESTS PRESENTED

Senator Dickson, on behalf of Senator Carriker, was recognized and introduced a group of students from Nocona High School.

The Senate welcomed these guests.

SENATE RULE 11.11 SUSPENDED

On motion of Senator Sims and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Natural Resources might consider the following bills today:

H.B. 1023
H.B. 2884
H.B. 853
H.B. 420

SENATE RULE 11.11 SUSPENDED

On motion of Senator Dickson and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Economic Development might meet today.

SENATE RULE 11.11 SUSPENDED

On motion of Senator Brooks and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Health and Human Services might consider **H.B. 918** today.

RECESS

On motion of Senator Brooks, the Senate at 12:24 p.m. took recess until 2:00 p.m. today.

AFTER RECESS

The Senate met at 2:00 p.m. and was called to order by the President.

BILLS AND RESOLUTIONS SIGNED

The President announced the signing in the presence of the Senate, after the captions had been read, the following enrolled bills and resolutions:

H.C.R. 22	H.B. 736	H.B. 1581	H.B. 2175
H.C.R. 154	H.B. 772	H.B. 1583	H.B. 2181
H.C.R. 192	H.B. 816	H.B. 1587	H.B. 2229
H.C.R. 235	H.B. 846	H.B. 1607	H.B. 2231
H.C.R. 246	H.B. 873	H.B. 1666	H.B. 2382
H.B. 44	H.B. 891	H.B. 1674	H.B. 2399
H.B. 53	H.B. 948	H.B. 1675	H.B. 2542
H.B. 103	H.B. 952	H.B. 1683	H.B. 2570
H.B. 134	H.B. 996	H.B. 1693	H.B. 2571

H.B. 166	H.B. 1007	H.B. 1753	H.B. 2572
H.B. 195	H.B. 1022	H.B. 1757	H.B. 2573
H.B. 225	H.B. 1036	H.B. 1769	H.B. 2674
H.B. 235	H.B. 1101	H.B. 1777	H.B. 2680
H.B. 272	H.B. 1111	H.B. 1779	H.B. 2694
H.B. 377	H.B. 1185	H.B. 1803	H.B. 2728
H.B. 396	H.B. 1246	H.B. 1828	H.B. 2760
H.B. 452	H.B. 1290	H.B. 1839	H.B. 2772
H.B. 463	H.B. 1342	H.B. 1851	H.B. 2777
H.B. 478	H.B. 1393	H.B. 1858	H.B. 2778
H.B. 480	H.B. 1485	H.B. 1906	H.B. 2779
H.B. 496	H.B. 1486	H.B. 1927	H.B. 2792
H.B. 504	H.B. 1494	H.B. 1931	H.B. 2793
H.B. 541	H.B. 1495	H.B. 1941	H.B. 2811
H.B. 616	H.B. 1519	H.B. 1976	H.B. 2835
H.B. 617	H.B. 1552	H.B. 2153	H.B. 2845
H.B. 686	H.B. 1577	H.B. 2161	H.B. 2864

(Senator Carriker in Chair)

HOUSE CONCURRENT RESOLUTION 203

The Presiding Officer laid before the Senate the following resolution:

H.C.R. 203, Declaring Parker County the "Peach Capital" of Texas.

The resolution was read.

Senator Glasgow offered the following amendment to the resolution:

Amend H.C.R. 203 as follows:

On page 1, line 19, strike the word "official".

The amendment was read and was adopted by a viva voce vote.

The resolution as amended was adopted by a viva voce vote.

SENATE BILL 1331 WITH HOUSE AMENDMENTS

Senator Glasgow called S.B. 1331 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Amendment - Robnett

Amend S.B. 1331 by substituting the following:

A BILL TO BE ENTITLED AN ACT

relating to membership and credit in, and benefits and administration of, programs administered by the Employees Retirement System of Texas for officers, employees, and annuitants of the state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 812.005(a), Government Code, is amended to read as follows:

(a) A person's membership in the retirement system is terminated by:

(1) death of the person;

(2) retirement based on service credited in all classes of membership

in which the person has service credit;

(3) withdrawal of all of the person's accumulated contributions; or
(4) transfer of the person's accumulated contributions under Section 815.502(e) [815.502(f)].

SECTION 2. Sections 813.201 and 813.301, Government Code, are amended to read as follows:

Sec. 813.201. CURRENT SERVICE. (a) Except as otherwise provided by this section, service [Service] is credited in the applicable membership class for each month in which a member holds a position and for which the required contributions are made by the member and the state.

(b) A member may not, after August 31, 1991, accrue or establish a total of more than 50 years of service credit in the employee class of membership. When a total of 50 years of service credit is accrued or established by a member in the employee class, member and state contributions cease, although the member retains membership subject to Section 812.005.

(c) Service may not be credited in both membership classes for the same period unless one of the credits is for service established under Section 813.402 of this subtitle.

Sec. 813.301. CREDITABLE MILITARY SERVICE. (a) Military service creditable in the retirement system is active federal duty as a member of the armed forces of the United States [during a time, or within 12 months after a time, that the United States is or was engaged in:

[~~(1) organized conflict, whether a state of war or a police action involving conflict with foreign forces; or~~

[~~(2) a crisis in this country].~~

(b) [The board of trustees by rule shall determine the periods recognized for purposes of this subtitle as times of organized conflict or crisis.

[~~(c) A member may not establish more than 60 months of service credit in the retirement system for military service.~~

SECTION 3. Sections 813.304(b) and (c), Government Code, are amended to read as follows:

(b) The retirement system shall use military service credit [established before January 1, 1978;] in computing service retirement or nonoccupational disability retirement benefits of a member of the employee class only if the member has, without military service credit, at least 10 years of service credit in that [the employee] class [or at least 6 years of service credit in the elected class].

(c) The retirement system shall use military service credit [established on or after January 1, 1978;] in computing service retirement or nonoccupational disability retirement benefits of a member of the elected class:

(1) only if the member has, without military service credit, at least six years of service credit in that class, if the military service credit was established before January 1, 1978; or

(2) only if the member [who has the military service credit] has enough service credit, exclusive of the military service credit, to be eligible for service retirement benefits at age 60, if the military service credit was established on or after January 1, 1978.

SECTION 4. Sections 814.104 and 814.105, Government Code, are amended to read as follows:

Sec. 814.104. ELIGIBILITY OF MEMBER FOR SERVICE RETIREMENT. (a) Except as provided by Section 814.102 or by rule adopted under Section 813.304(d) or 803.202(2), a member who has service credit in the retirement system is eligible to retire and receive a service retirement annuity, if the member:

(1) is at least 60 years old and has 5 years of service credit in the employee class [10 years of service credit in the retirement system]; [or]

(2) is at least 55 years old and has 25 [30] years of service credit in the retirement system; or

(3) is at least 50 years old and has 30 years of service credit in the retirement system.

(b) ~~[A member who has service credit in the retirement system is eligible to retire and receive a service retirement annuity actuarially reduced from the standard service retirement annuity available under Subsection (a)(1), if the member is at least 55 years old and has 25 years of service credit in the retirement system:~~

~~[(c) A member who has service credit in the retirement system is eligible to retire and receive a service retirement annuity actuarially reduced from the standard service retirement annuity available under Subsection (a)(2), if the member is at least 50 years old and has 30 years of service credit in the retirement system:~~

~~[(d)] A member who is at least 55 years old and who has at least 10 years of service credit as a commissioned peace officer engaged in criminal law enforcement activities of the Department of Public Safety, the Texas Alcoholic Beverage Commission, the State Purchasing and General Services Commission Capitol Area Security Force, or the Parks and Wildlife Department, or as a custodial officer, is eligible to retire and receive a service retirement annuity.~~

Sec. 814.105. SERVICE RETIREMENT BENEFITS FOR EMPLOYEE CLASS SERVICE. (a) Except as otherwise provided by this section, the standard service retirement annuity for service credited in the employee class of membership is an amount computed as ~~[on the basis of]~~ the member's average monthly compensation for service in that class for the 36 highest months of compensation multiplied by ~~[during the last 60 months of service, times 1.5 percent for each of the first 10 years of service credit in the class, plus]~~ 2 percent for each [subsequent] year of service credit in that class. ~~[The board of trustees by rule shall, for the purpose of computing standard service retirement annuities, increase to 1.8 percent the value of each of a person's first 10 years of service credit in the employee class of membership, unless the actuary for the retirement system certifies that the adoption of the rule will cause the time required to amortize the unfunded actuarial liabilities of the retirement system to be increased to a period that exceeds 31 years. A rule adopted under this subsection must take effect on or before January 1, 1989:]~~

(b) ~~[The board of trustees by rule shall, for the purpose of computing standard service retirement annuities, increase to 2 percent the value of each of a person's first 10 years of service credit in the employee class of membership, unless the actuary for the retirement system certifies that the adoption of the rule will cause the time required to amortize the unfunded actuarial liabilities of the retirement system to be increased to a period that exceeds 31 years. A rule adopted under this subsection must take effect not later than January 1, 1991:~~

~~[(c)] The standard service retirement annuity for service credited in the employee class may not be less than \$150 [\$75] a month nor more than 100 [80] percent of the average monthly compensation computed under Subsection (a) [or (b)].~~

~~[(d)] Notwithstanding the provisions of Subsection (a), the standard service retirement annuity for service credited in the employee class of membership to a member whose effective date of retirement is not earlier than November 30, 1986, or later than May 31, 1987, is an amount computed on the basis of the member's average monthly compensation for service in that class for the 36 highest months of compensation during the last 60 months of service, times 2 percent for each year of service credit in that class. An annuity computed as provided by this subsection is subject to the requirements of Subsection (c). This subsection does not apply to a disability retirement annuity, death benefit annuity, or any other benefit, except a service retirement annuity, that is payable by the retirement system:]~~

SECTION 5. Sections 814.107(a), (b), (c), (d), and (e), Government Code, are amended to read as follows:

(a) A member who has at least 20 years of service credit as a law enforcement or custodial officer is eligible to retire regardless of age and receive a standard service retirement annuity in an amount and to be funded as provided by this section.

(b) The standard ~~[combined]~~ service retirement annuity payable for at least 20 years of service credit as a law enforcement or custodial officer is an amount computed on the basis of the member's average monthly compensation for that service for the 36 highest months of compensation ~~[during the last 60 months of service]~~, times a percentage derived from the following table:

Years of Law Enforcement or Custodial Officer Service Credit	Percentage of Average Monthly Compensation
at least 20 but less than 21	50 percent
at least 21 but less than 22	52 percent
at least 22 but less than 23	54 percent
at least 23 but less than 24	56 percent
at least 24 but less than 25	58 percent
at least 25 but less than 26	60 percent
at least 26 but less than 27	62 percent
at least 27 but less than 28	64 percent
at least 28 but less than 29	66 percent
at least 29 but less than 30	68 percent
at least 30 but less than 31	70 percent
at least 31 but less than 32	71 percent
at least 32 but less than 33	72 percent
at least 33 but less than 34	73 percent
at least 34 but less than 35	74 percent
at least 35 but less than 36	75 percent
at least 36 but less than 37	76 percent
at least 37 but less than 38	77 percent
at least 38 but less than 39	78 percent
at least 39 but less than 40	79 percent
40 or more	80 percent

(c) The ~~[portion of the]~~ standard combined service retirement annuity that is payable under this section [from the law enforcement and custodial officer supplemental retirement fund] is based on retirement at the age of 50 or older. A law enforcement or custodial officer who retires before attaining the age of 50 is entitled to an annuity that is ~~[portion]~~ actuarially reduced from the annuity available at the age of 50 to the earlier retirement age and is payable from the law enforcement and custodial officer supplemental retirement fund.

(d) A member who retires under this section retires simultaneously from the employee class of membership~~[-although the person must meet the applicable age requirements of Section 814.104 before becoming entitled to receive a service retirement annuity under Section 814.105].~~ Benefits for service in the employee class of membership become payable from the trust fund established by Section 815.310 at the age of 50 under the computation provided by Section 814.105. Optional retirement annuities provided by Section 814.108 are available to a member eligible to receive a service retirement annuity under this section, but the same optional plan and designee must be selected for the portion of the annuity payable from the law enforcement and custodial officer supplemental retirement fund [under this section] and the portion payable from the trust fund established by Section 815.310 [under Section 814.105].

(e) The amount payable from the law enforcement and custodial officer supplemental retirement fund is reducible by the amount paid from the trust fund established by Section 815.310 for service as a law enforcement or custodial officer. The total combined amount of an annuity under this section may not be less than

the authorized benefit under Subsection (b) subtracted by any amount necessary because of selection of an optional annuity, because of retirement before the age of 50, or as provided by Subsection (f). ~~[The portion of a combined service retirement annuity payable under this section from money in the law enforcement and custodial officer supplemental retirement fund is the amount remaining after deduction of any amount payable for service as a law enforcement or custodial officer under Section 814.105 from the total derived under Subsections (b) and (c).]~~

SECTION 6. Section 814.108, Government Code, is amended to read as follows:

Sec. 814.108. **OPTIONAL SERVICE RETIREMENT BENEFITS.** (a) Instead of the standard service retirement annuity payable under Section 814.103 or ~~814.105 or 814.106~~, the standard combined service retirement annuity payable under Section 814.107, or an annuity actuarially reduced because of age under Section 814.107 ~~[one of those sections]~~, a retiring member may elect to receive an optional service retirement annuity under this section.

(b) A person who selects an optional lifetime retirement annuity must designate before the selection becomes effective one person to receive the annuity on the death of the person making the selection. A person who selects an optional retirement annuity payable for a guaranteed period may designate, before or after retirement, one or more persons to receive the annuity on the death of the person making the selection.

(c) An eligible person may select any optional retirement annuity approved by the board of trustees, or may select one of the following options, which provide that:

(1) after the retiree's death, the reduced annuity is payable in the same amount throughout the life of the person designated by the retiree before retirement;

(2) after the retiree's death, one-half of the reduced annuity is payable throughout the life of the person designated by the retiree before retirement;

(3) if the retiree dies before 60 monthly annuity payments have been made, the remainder of the 60 payments are payable to one or more designees or, if one does not exist, to the retiree's estate; or

(4) if the retiree dies before 120 monthly annuity payments have been made, the remainder of the 120 payments are payable to one or more designees or, if one does not exist, to the retiree's estate.

(d) If a person who is nominated by a retiree in the written designation under Subsection (b) predeceases the retiree, the reduced annuity of a retiree who has elected an optional lifetime retirement annuity shall be increased to the standard service retirement annuity that the retiree would otherwise be entitled to receive if the retiree had not selected that annuity option. The standard service retirement annuity shall be adjusted as appropriate for:

(1) early retirement as permitted by law; and

(2) postretirement increases in retirement benefits authorized by law after the date of retirement.

(e) The increase in the annuity under Subsection (d) begins with the monthly payment made to the retiree for the month following the month in which the person nominated dies or the September 30, 1991, payment, whichever is later, and is payable to the retiree for the remainder of the retiree's life.

(f) The computation of an optional annuity must be made without regard to the sex of the annuitant or designee involved.

SECTION 7. Section 814.202(a), Government Code, is amended to read as follows:

(a) A member is eligible to retire for a nonoccupational disability if the member ~~[is less than 60 years old and]~~ has at least:

(1) 8 years of membership service credit in the elected class of membership ~~[and was a member of that class on August 31, 1983];~~

(2) 6 years of membership service credit in the elected class plus 2 years of military service credit established before January 1, 1978; or

(3) 10 years of membership service credit in the employee class of membership [retirement system].

SECTION 8. Section 814.205(c), Government Code, is amended to read as follows:

(c) A person who retires under this section may [not] select an optional retirement plan instead of the standard retirement annuity.

SECTION 9. Sections 814.206, 814.208, 814.210, and 814.211, Government Code, are amended to read as follows:

Sec. 814.206. DISABILITY RETIREMENT BENEFITS FOR EMPLOYEE CLASS SERVICE. (a) Except as provided by Subsection (b) and Section 814.207, a standard disability retirement annuity for service credited in the employee class of membership is an amount computed at the rate of two [1.7] percent for each year of service credit in that class, times:

(1) the member's monthly compensation at the time of the disabling injury or disease, if the disability is occupational; or

(2) the member's average monthly compensation for service in the employee class for the 36 [60] highest months of compensation [during the last 120 months of service], if the disability is nonoccupational.

(b) A standard disability retirement annuity under this section may not be more than 100 [70] percent of the applicable rate of compensation or, if occupational, not [nor] less than 35 percent of the applicable rate, or \$150 [\$110] a month, whichever is greater.

(c) A standard disability retirement annuity computed under this section is payable throughout the life of the retiree, except as provided by Section 814.210.

(d) Instead of the standard disability retirement annuity payable under this section, a retiring member may elect to receive an optional disability retirement annuity payable throughout the life of the retiree and actuarially reduced, under tables adopted by the board of trustees, from the standard disability retirement annuity.

(e) Optional disability retirement annuities available to a disabled retiring member are those available to members retiring from regular service under Section 814.108(c).

Sec. 814.208. MEDICAL EXAMINATION OF DISABILITY RETIREE.

(a) Once each year during the first five years after a member retires for disability, and once in each three-year period after that, the retirement system may require a disability retiree [who is less than 60 years old] to undergo a medical examination.

(b) An examination under this section may be held at the retiree's residence or at any place mutually agreed to by the retirement system and the retiree. The retirement system may designate a physician to perform the examination. The retiree shall pay the expense of the examination.

(c) If a disability retiree refuses to submit to a medical examination as provided by this section, the executive director shall discontinue the retiree's annuity payments until the retiree submits to an examination. If a retiree has not submitted to an examination as provided by this section before the first anniversary of the date of first refusal, the executive director shall revoke all rights of the retiree to an annuity.

(d) If the medical board finds that a disability retiree is no longer mentally or physically incapacitated for the performance of duty, it shall certify its findings and submit them to the executive director. If the executive director concurs in this certification, the annuity terminates and membership is restored as provided by Section 814.210.

Sec. 814.210. RESTORATION OF DISABILITY RETIREE TO ACTIVE SERVICE. (a) If a retiree ~~[who is less than 60 years old and]~~ who is receiving a disability retirement annuity returns to state service or if the retiree is found to be no longer incapacitated for the further performance of duty, the person must again become a member of the retirement system or, if the person holds a position included in the elected class of membership, may elect to become a member. If a person becomes a member under this section, the executive director ~~[board of trustees]~~ shall terminate the person's annuity payments.

(b) A person who becomes a member under this section is entitled to service credit for all service previously established and not canceled by a withdrawal of contributions.

(c) If a person's disability retirement annuity is discontinued under this section, the person's selection of any optional annuity becomes void.

Sec. 814.211. REFUND AT ANNUITY DISCONTINUANCE. (a) Except as provided by Subsection (b), if a disability retirement annuity is discontinued ~~[under Section 814.208]~~, the member ~~[retiree]~~ is entitled to a lump-sum payment from the retirement annuity reserve account in an amount, if any, by which the amount in the member's ~~[retiree's]~~ individual account in the employees saving account at the time of disability retirement exceeds the amount of payments payable before the date the annuity was discontinued.

(b) The benefit provided by this section is not payable to a member ~~[retiree]~~ who, after discontinuance of a disability retirement annuity, returns to state service or elects a service retirement annuity.

SECTION 10. Section 814.301, Government Code, is amended to read as follows:

Sec. 814.301. SELECTION OF DEATH BENEFIT PLAN BY MEMBER.

(a) ~~A [contributing] member who has at least 10 years of service credit in the elected or employee class of membership; or a noncontributing member who has at least 12 years of service credit in the elected class;~~ may select a death benefit plan for the payment, if the member dies while the member is eligible to select a plan, of a death benefit annuity to a person designated by the member. Death benefit annuities available for selection by a member described in this subsection are the optional annuities provided by Sections 814.108(c)(1) and (c)(4), payable as if the member had retired at the time of death.

~~(b) [A member who has a total of at least 20 years of service credit in retirement systems administered by the board of trustees may select a death benefit plan for the payment, if the member dies while eligible to select a plan, of a death benefit annuity to a person designated by the member. Death benefit annuities available for selection by a member described in this subsection are the optional annuities provided by Section 814.108(c) and, if the member has service credit in another retirement system administered by the board, any optional death benefit plan provided under that system.]~~

~~[(c)] If a member of a retirement system administered by the board of trustees selects death benefit plans under more than one board-administered retirement system, each plan selected may take effect. [The plan selected most recently governs payments based on service in a system other than the one in which the plan was selected if the amount of service credit in that other system, by itself, would be insufficient to permit selection of a death benefit plan.] If a member selects a death benefit plan under only one retirement system administered by the board of trustees, the plan applies to service credit in other board-administered retirement systems.~~

~~(c) [(d)] The computation of a death benefit annuity selected under this section must include the ages of the member and the member's designated beneficiary at the time of the member's death.~~

~~(d) [(e)] A member may select a death benefit plan by filing an application for a plan with the retirement system on a form prescribed by the retirement system.~~

After selection, a death benefit plan takes effect at death unless the member amends the plan, selects a retirement annuity at the time of retirement, has chosen a plan that cannot take effect, or becomes ineligible to select a plan.

SECTION 11. Section 814.302(a), Government Code, is amended to read as follows:

(a) If a member eligible to select a death benefit plan under Section 814.301 dies without having made a selection, or if a selection cannot be made effective, the member's surviving spouse may select a plan in the same manner as if the member had made the selection. If there is no surviving spouse, the personal representative of the decedent's estate may make the selection for the benefit of the decedent's heirs or devisees. In lieu of selecting a death benefit plan, the surviving spouse or, if there is none, the personal representative of the decedent's estate, may elect to receive a refund of contributions.

SECTION 12. Section 814.305, Government Code, is amended to read as follows:

Sec. 814.305. ANNUITY FOR SURVIVOR OF LAW ENFORCEMENT OR CUSTODIAL OFFICER. ~~[(a)]~~ If a member who has at least 20 years of service credit as a law enforcement or custodial officer dies, the amount of the death benefit annuity payable for the member's service as a law enforcement or custodial officer is ~~[derivable from the greater of:~~

~~[(1) an amount computed as provided by Section 814.105, including any applicable reduction factors; or~~

~~[(2)] an amount computed and funded as provided by Section 814.107, including any applicable reduction factors.~~

~~[(b) The portion of a death benefit annuity computed as provided by Subsection (a)(2) that is payable from the law enforcement and custodial officer supplemental retirement fund is the amount remaining after deduction of an amount computed for service as a law enforcement or custodial officer as provided by Section 814.105; including any applicable reduction factors, from the amount computed as provided by Subsection (a)(2).]~~

SECTION 13. Sections 814.401(a) and (d), Government Code, are amended to read as follows:

(a) Except as provided by Subsection (d), if a member dies under a circumstance described in Subsection (c), a lump-sum death benefit is payable from the state accumulation account in an amount computed at the rate of five percent of the amount in the member's individual account in the employees saving account at the time of death, times the number of full years of service credit the member had at the time of death, but not more than 100 percent of the amount in the member's individual account.

(d) A death benefit may not be paid under this section if, at the time of death, [the member was eligible to select] a death benefit annuity under Section 814.301 became effective.

SECTION 14. Section 814.403(c), Government Code, is amended to read as follows:

(c) A death benefit may not be paid under this section if, at the time of death, [the member was eligible to select] a death benefit annuity under Section 814.301 became effective.

SECTION 15. Section 814.505(a), Government Code, is amended to read as follows:

(a) Except as provided by Subsection (c), when a person who receives a service or disability retirement annuity dies, a lump-sum death benefit is payable from the retirement annuity reserve account in the amount, if any, by which the balance in the retiree's individual account in the employees saving account at the time of

service retirement exceeds the total of annuity payments payable before the retiree's death.

SECTION 16. Subchapter C, Chapter 815, Government Code, is amended by adding Section 815.211 to read as follows:

Sec. 815.211. FIDUCIARY INSURANCE. In addition to any requirements in Section 815.209, the board of trustees may purchase liability insurance for the coverage of the trustees, employees, and agents of the board of trustees in such amounts as the board of trustees, in its sole discretion, considers reasonable and necessary.

SECTION 17. Section 815.502, Government Code, is amended to read as follows:

Sec. 815.502. TRANSFER OF ACCUMULATED CONTRIBUTIONS IN CERTAIN CIRCUMSTANCES. (a) ~~If~~ [Except as provided by Subsection (b), if] a valid application for payment based on money or credit in a member's individual account in the employees saving account is not filed with the retirement system before the expiration of five years after the last day of the most recent month of service for which the member has credit in the retirement system, the retirement system shall mail a notice to the member at the member's most recent address as shown on system records. If no address is available or if the notice is returned unclaimed, the retirement system shall cause a notice to be published in a newspaper of general circulation in the state.

(b) ~~[This section does not apply to an account of a member who has enough service credit in the retirement system to enable the member to retire at an attained age.~~

(c) A notice under this section must include the name of the member, the name of the agency at which the member most recently acquired service credit, a statement that the member is entitled to a payment of money, and a statement of the procedure for keeping the member's account open or claiming a payment.

(c) ~~(d)~~ Before the 31st day after the day a notice is mailed or published under this section, whichever is later, an application must be filed with the retirement system:

(1) by the member, requesting that the account be kept open; or

(2) by the member, or, if the member has died, by any other person entitled to payment based on the member's account, requesting payment based on money or credit in the account.

(d) ~~(e)~~ If a valid application is made as provided by Subsection (c) ~~(2)~~ ~~(d)(2)~~, the retirement system shall pay the applicant any benefit to which the applicant is entitled.

(e) ~~(f)~~ If a valid application is not made as provided by Subsection (c) ~~(d)~~, the retirement system shall cancel the service credit in the member's account, transfer the accumulated contributions in the account to the state accumulation account, and close the member's account.

(f) ~~(g)~~ Except as provided by Subsection (i) ~~(j)~~, if a person files with the retirement system a valid application for payment based on a closed account the accumulated contributions of which have been transferred under Subsection (e) ~~(f)~~, the retirement system shall restore to the employees saving account the amount transferred and credit canceled and shall pay any benefit to which the applicant is entitled.

(g) ~~(h)~~ Except as provided by Subsection (i) ~~(j)~~, if a person whose accumulated contributions have been transferred under Subsection (e) ~~(f)~~ again becomes a member, the retirement system shall reinstate in the member's active individual account in the employees saving account the amount transferred and credit canceled.

(h) ~~(i)~~ Except as provided by Subsection (i) ~~(j)~~, if a person whose accumulated contributions have been transferred under Subsection (e) ~~(f)~~ would

be eligible to receive a benefit from the retirement system under Chapter 803 were the person's account not closed, the person may file with the retirement system an application for retirement, and the retirement system shall reopen the person's account and reinstate the canceled credit for the purpose of allowing the person to retire.

(i) [(j)] A payment under Subsection (f) [(g)], a reinstatement under Subsection (g) [(h)], or a retirement under Subsection (h) [(i)] precludes action under any other of those subsections.

(j) [(k)] If a member makes an application as provided by Subsection (c)(1) [(d)(1)], the retirement system, after the fifth anniversary of the date the application was filed, shall reinstitute the process provided by Subsections (a), (b), (c), (d), [(e);] and (e) [(f)], if disposition of money and credit in the account has not been made before that time.

(k) [(l)] The retirement system may apply the process provided by Subsections (a), (b), (c), (d), [(e);] and (e) [(f)] to other money it holds for payment, if the system first determines that no claim for the money is likely to be filed.

SECTION 18. Subchapter F, Chapter 815, Government Code, is amended by adding Section 815.5021 to read as follows:

Sec. 815.5021. PAYMENT TO ALTERNATE BENEFICIARY. If the retirement system through diligence has not located a primary beneficiary before the expiration of two years after the date benefits became payable to the beneficiary under this subtitle, the retirement system may pay the benefits to an alternate beneficiary or, if there is none, to the estate of the deceased member or annuitant.

SECTION 19. Section 833.103(c), Government Code, is amended to read as follows:

(c) Military service creditable in the retirement system is active duty federal military service ~~[performed during a time that the United States is or was engaged in armed conflict. The board of trustees by rule shall determine the periods recognized for purposes of this subtitle as times of armed conflict].~~

SECTION 20. Section 834.103, Government Code, is amended to read as follows:

Sec. 834.103. OPTIONAL SERVICE RETIREMENT ANNUITY. (a) Instead of a service retirement annuity payable under Section 834.102, a retiring member may elect to receive an optional service retirement annuity, payable throughout the life of the retiree and actuarially reduced, under tables adopted by the board of trustees, from the annuity otherwise payable to its actuarial equivalent.

(b) Optional service retirement annuities available to a retiring member are those available to retiring members of the Employees Retirement System of Texas under Section 814.108(c).

(c) A person may apply for an optional service retirement annuity by filing an application for the annuity with the retirement system before the 31st day after the date of the person's retirement.

(d) If a person who is nominated by a retiree in the written designation under Subsection (b) predeceases the retiree, the reduced annuity of a retiree who has elected an optional lifetime retirement annuity under Section 814.108(c) shall be increased to the standard service retirement annuity that the retiree would otherwise be entitled to receive if the retiree had not selected that annuity option. The standard service retirement annuity shall be adjusted as appropriate for:

(1) early retirement as permitted by law; and

(2) postretirement increases in retirement benefits authorized by law after the date of retirement.

(e) The increase in the annuity under Subsection (d) begins with the monthly payment made to the retiree for the month following the month in which the person

nominated dies or the September 30, 1991, payment, whichever is later, and is payable to the retiree for the remainder of the retiree's life.

(f) The computation of an optional service retirement annuity must include the ages of the retiring member and the member's designated beneficiary at the time of the member's retirement.

SECTION 21. Sections 834.301(a) and (b), Government Code, are amended to read as follows:

(a) A ~~[contributing] member who has at least 10 years of service credit in the retirement system~~~~[- or a noncontributing member who has at least 12 years of service credit;]~~ may select a death benefit plan for the payment, if the member dies before retirement, of a death benefit annuity to one or more persons designated by the member. Death benefit annuities available for selection by a member described in this subsection are the optional annuities provided by Sections 814.108(c)(1) and (c)(4).

(b) ~~[A member who meets the requirements of Section 814.301(b) may select a death benefit plan under that subsection.]~~ Section 814.301(b) ~~[814.301(c)]~~ applies to a death benefit plan selected by a member in applicable circumstances.

SECTION 22. Section 838.103(c), Government Code, is amended to read as follows:

(c) Military service creditable in the retirement system is active duty federal military service ~~[performed during a time that the United States is or was engaged in armed conflict. The board of trustees by rule shall determine the periods recognized for purposes of this subtitle as times of armed conflict].~~

SECTION 23. Sections 839.103 and 839.301, Government Code, are amended to read as follows:

Sec. 839.103. OPTIONAL SERVICE RETIREMENT ANNUITY. (a) Instead of a service retirement annuity payable under Section 839.102, a retiring member may elect to receive an optional service retirement annuity provided by the board of trustees or one of the following optional service retirement annuities, actuarially reduced to an actuarially equivalent value and consisting of:

(1) an annuity payable during the retiring member's life and continuing after death in the same amount, throughout the life of one person designated by the retiring member before retirement;

(2) an annuity payable during the retiring member's life and continuing after death in an amount equal to one-half of the amount payable during the retiring member's life, throughout the life of one person designated by the retiring member before retirement;

(3) an annuity payable for the greater of the rest of the retiring member's life or 60 months; or

(4) an annuity payable for the greater of the rest of the retiring member's life or 120 months.

(b) An annuity selected under Subsection (a)(3) or (a)(4) that is payable after the retiring member's death shall be paid to one or more persons designated by the retiring member before or after retirement or, if no person has been designated or all designees die before all payments are made, to the retiree's estate.

(c) A person may apply for an optional service retirement annuity by filing an application for the annuity with the retirement system before the date of the person's retirement.

(d) If a person who is nominated by a retiree in the written designation under Subsection (a) predeceases the retiree, the reduced annuity of a retiree who has elected an optional lifetime retirement annuity under Subsection (a) shall be increased to the standard service retirement annuity that the retiree would otherwise be entitled to receive if the retiree had not selected that annuity option. The standard service retirement annuity shall be adjusted as appropriate for:

(1) early retirement as permitted by law; and

(2) postretirement increases in retirement benefits authorized by law after the date of retirement.

(e) The increase in the annuity under Subsection (d) begins with the monthly payment made to the retiree for the month following the month in which the person nominated dies and is payable to the retiree for the remainder of the retiree's life.

(f) The computation of an optional service retirement annuity payable throughout the life of a named individual must include the age of that individual.

(g) ~~[(e)]~~ An optional service retirement annuity may not provide that more than 50 percent of the value of the annuity, as determined at the time of retirement, be used to provide a benefit to a person other than the person on whose service the annuity is based.

Sec. 839.301. SELECTION OF DEATH BENEFIT PLAN BY MEMBER.

(a) An eligible member may select a death benefit plan for the payment of a death benefit annuity, to be paid if the member dies before retirement. Except as provided by Subsections (c) and (d) ~~and (e)~~, a death benefit annuity is an amount computed, in the manner provided under Sections 839.102(a) and (b) for computation of a standard service retirement annuity, as if the member had retired on the date of death and payable, beginning on the day after the date of the member's death, in one of the following ways:

(1) throughout the life of one person designated by the member; or

(2) to one or more persons designated by the member, for a period of 120 months.

(b) A member eligible to select a death benefit plan is one who:

~~[(1)]~~ is a ~~contributing~~ member and has at least 10 years of service credit in the retirement system;

~~[(2)] is a noncontributing member and has at least 12 years of service credit in the retirement system; or~~

~~[(3)] has a total of at least 20 years of service credit in retirement systems administered by the board of trustees.~~

(c) ~~If a member who has qualified under Subsection (b)(1) and has selected a death benefit plan ceases to be a contributing member before death and does not qualify under Subsection (b)(2) or (b)(3), the selection of a plan is voided.~~

~~[(d)]~~ The retirement system shall, under tables adopted by the board of trustees as provided by Section 840.005, actuarially reduce the amount of a death benefit annuity payable under this section for the difference between the member's age on the date of death and age 65, if the member dies before attaining that age.

~~[(e)]~~ The computation of a death benefit annuity selected under Subsection (a)(1) must include the age of the designated recipient.

~~[(f)]~~ A member may select a death benefit plan by filing an application for a plan with the board of trustees on a form prescribed by the board. After selection, a death benefit plan takes effect at death unless the member amends the plan, selects a retirement annuity at the time of retirement, or has chosen a plan that cannot take effect ~~[or unless the selection is voided under Subsection (c)].~~

SECTION 24. Subchapter C, Chapter 840, Government Code, is amended by adding Section 840.210 to read as follows:

Sec. 840.210. FIDUCIARY INSURANCE. In addition to any requirements in Section 840.208, the board of trustees may purchase liability insurance for the coverage of the trustees, employees, and agents of the board of trustees in such amounts as the board of trustees, in its sole discretion, considers reasonable and necessary.

SECTION 25. Sections 3(a)(2), (7), (11), and (16), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), are amended to read as follows:

(2) "Annuitant" shall mean an officer or employee who retires under:

(A) the jurisdiction of the Employees Retirement System of Texas and either receives an annuity or is eligible to receive an annuity, pursuant to Subtitle B, D, or E of Title 8, Government Code [C, E, or H], or Chapter 803, Government Code, that is based on at least 10 years of service credit or eligibility under Section 814.002 or 814.102, Government Code [13, of Title 110B, Revised Statutes];

(B) the jurisdiction of the Teacher Retirement System of Texas and either receives an annuity or is eligible to receive an annuity, pursuant to Subtitle C of Title 8, Government Code, that is based on at least 10 years of service credit [D, Title 110B, Revised Statutes], whose last state employment prior to retirement was as an employee of the Teacher Retirement System of Texas, school districts established within state eleemosynary institutions, the Texas Rehabilitation Commission, the Central Education Agency, or the Texas Higher Education Coordinating Board[, Texas College and University System]; or

(C) the optional retirement program established by Chapter 830, Government Code [36, Title 110B, Revised Statutes], and either receives an annuity or is eligible to receive an annuity under that program, if the person's last state employment before retirement, including employment by a public community/junior college, was as an officer or employee of the Texas Higher Education Coordinating Board[, Texas College and University System,] and if the person either:

(i) would have been eligible to retire and receive a service retirement annuity from the Teacher Retirement System of Texas based on at least 10 years of service credit had the person not elected to participate in the optional retirement program; or

(ii) is disabled.

(7) "Health benefits plan" shall mean any group policy or contract, medical, dental, or hospital service agreement, membership or subscription contract, salary continuation plan, health maintenance organization agreement, preferred provider arrangement, or any similar group arrangement or any combination of those policies, plans, contracts, agreements, or arrangements provided for the purpose of providing, paying for, or reimbursing expenses for health care services, including comparable health care services for employees who rely solely on spiritual means through prayer for healing in accordance with the teaching of a well recognized church or denomination.

(11) "Trustee" shall mean the State Board of Trustees[, provided for in [Section 6,] Chapter 815, Government Code [352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes)], to administer the Employees Retirement System of Texas.

(16) "Basic coverage [plan for active full-time employees]" shall mean the programs [program] of group coverages determined by the trustee in which every full-time employee and every annuitant participates automatically unless participation is specifically waived.

SECTION 26. Section 3, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended by adding Subsection (c) to read as follows:

(c) Notwithstanding Subsection (a)(2) of this section, a person who, before September 1, 1991, retired under Subtitle C, Title 8, Government Code, with at least 5 but less than 10 years of service is also an annuitant for purposes of this Act.

SECTION 27. Section 4, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 4. ADMINISTRATION. The administration and implementation of this Act are vested solely in the trustee. As it shall deem necessary to insure the

proper administration of this Act and the insurance coverages, services, and benefits provided for or authorized by this Act, the trustee, as an agency of the State of Texas, shall have full power and authority to hire employees. The duties of such employees and their compensation shall be determined and assigned by the trustee. The trustee may, on a competitive bid basis, contract with a qualified, experienced firm of group insurance specialists or an administering firm who shall act for the trustee in a capacity as independent administrators and managers of the programs authorized under this Act. The independent administrator so selected by the trustee shall assist the trustee to insure the proper administration of the Act and the coverages, services, and benefits provided for or authorized by the Act and shall be paid by the trustee. Compensation of all persons employed by the trustee and their expenses shall be paid at such rates and in such amounts as the trustee shall approve, providing that in no case shall they be greater than those expenses paid for like or similar services. Also, as an agency of the State of Texas, the trustee shall have full power and authority to enter into interagency contracts with any department of the State of Texas. The interagency contracts shall provide for reimbursement to the state departments and shall define the services to be performed by the departments for the trustee. The trustee shall have full power and authority to promulgate all rules, regulations, plans, procedures, and orders reasonably necessary to implement and carry out the purposes and provisions of this Act in all its particulars, including but not limited to the following:

(a) preparation of specifications for coverages provided by authority of this Act;

(b) prescribing the time at which and the conditions under which an employee is eligible for all coverages provided under this Act;

(c) determination of the methods and procedures of claims administration;

(d) determination of the amount of employee payroll deductions and reductions and the responsibility of establishing procedures by which such deductions and reductions shall be made;

(e) establishment of procedures by which the trustee shall decide contested cases arising from programs or coverages provided under authority of this Act;

(f) continuing study of the operation of all coverages provided under this Act, including such matters as gross and net cost, administration costs, benefits, utilization of benefits, and claims administration;

(g) administration of the Employees Life, Accident, and Health Insurance and Benefits Fund, providing for the beginning and ending dates of coverages of employees and annuitants and their dependents under all benefit plans;

(h) adoption of all rules and regulations consistent with the provisions of this Act and its purpose as it deems necessary to carry out its statutory duties and responsibilities;

(i) development of basic plans of group coverages and benefits applicable to all state employees. The trustee also may provide for optional group coverages and benefits in addition to the basic plan;

(j) to provide either additional statewide optional programs or individual agency optional programs as the trustee may determine is appropriate;[and]

(k) design, development, adoption, implementation, and administration of a cafeteria plan;

(l) purchase of liability insurance for the coverage of the trustees, employees, and agents of the board of trustees in such amounts as the board of trustees, in its sole discretion, considers reasonable and necessary;

(m) development of health benefits plans that permit access to high quality, cost-effective health care;

(n) designing, implementing, and monitoring health benefits plan features intended to discourage excessive utilization, promote efficiency, and contain costs;

(o) development and continuing refinement of a health care benefit strategy consistent with evolving benefit delivery systems; and

(p) development of a funding strategy to efficiently utilize employer contributions to achieve the purposes of this Act.

SECTION 28. Sections 5(e) and (f), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), are amended to read as follows:

(e) The trustee is authorized to select, ~~and~~ contract for, and make available to eligible employees and annuitants in a specific area of the state, services performed by health maintenance organizations which are approved by the federal government or the State of Texas to offer health care services in that area ~~to eligible employees and annuitants in a specific area of the state. Eligible employees and annuitants may participate in a selected health maintenance organization in lieu of participation in the health insurance benefits in the Employees Uniform Group Insurance Program, and the employer contributions provided by Section 14(a) of this Act for health care coverage shall be paid to the selected health maintenance organizations on behalf of the participants].~~

(f) The trustee, in its sole discretion and in accordance with the requirements of this section, shall determine those plans of coverages for which the trustee does not intend to purchase insurance and which it intends to provide directly from the Employees Life, Accident, and Health Insurance and Benefits Fund. The trustee shall make an estimate of the unrestricted balance of the fund. Unless such estimated unrestricted balance is equal to at least 10 [5] percent of the total benefits expected to be provided directly from the fund as a result of claims incurred during the fiscal year, the trustee shall include in the contributions required the amount necessary to establish an unrestricted balance in the fund of not less than 10 [5] percent. The unrestricted balance shall be placed in a contingency reserve fund to provide for adverse fluctuations in future charges, claims, costs, or expenses of the program.

SECTION 29. The Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code) is amended by adding Section 5A to read as follows:

Sec. 5A. AUTHORITY TO DEFINE BASIC, OPTIONAL, AND VOLUNTARY COVERAGES. (a) The trustee may define the basic coverage in which every full-time employee and every annuitant participates unless participation is specifically waived. The trustee may define different basic coverage plans for active full-time employees and for annuitants. Basic coverage must include basic health coverage. Basic health coverage may be offered through any health benefits plan.

(b) The trustee may define optional coverages for which the trustee may make available employer contributions under Section 14 of this Act.

(c) The trustee may define voluntary coverages for which the employee or annuitant is responsible for the full cost.

SECTION 30. Section 11, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 11. GROUP LIFE PROGRAM. (a) The trustee is authorized and directed to establish a group life program for all employees, including retired employees, of this state as herein provided, which, subject to the conditions and

limitations contained in this Act and the trustee's rules and regulations promulgated pursuant thereto, will provide for each employee group life coverages in such an amount as shall be determined by the trustee. In addition to the benefits hereinabove provided and subject to the conditions and limitations of the policy or policies purchased by the trustee, such policy or policies shall provide such payments and benefits for employees and retired employees as shall be determined by the trustee. The trustee is also authorized to include the dependents of employees in the life program.

(b) Notwithstanding any other provisions of this code, the trustee may authorize dependent term life insurance in an amount equal to the term life insurance provided under the basic coverage and may authorize optional term life insurance equal to four times the employee's annual salary plus the amount of term life insurance provided under the basic coverage.

(c) The trustee shall prescribe regulations providing for the conversion of other than annual rates of pay, and specify the types of pay included in annual pay and all other matters necessary to implement this section.

SECTION 31. Section 14, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 14. PAYMENT OF CONTRIBUTIONS. (a) The trustee shall use the amount appropriated for employer contributions in accordance with Section 15 of this Act to fund the basic coverage. The trustee may equitably allocate to each health benefits plan the employer contributions that would be required to fund basic health coverage for participants in the plans to the extent funds are available. In allocating the employer contributions among plans, the trustee shall consider the relevant risk characteristics of each plan's enrollment, including demographic variations in the use and cost of health care and the prevailing cost patterns in the area in which the plan operates. The allocation must be consistent with applicable state and federal law [The State of Texas shall contribute monthly to the cost of each employee's group coverages such amount as shall be appropriated therefor by the legislature in the General Appropriations Act. A like amount for such employee shall be appropriated by the governing board of state departments in their respective official operating budgets if their employees are compensated from funds appropriated by such budgets rather than by the General Appropriations Act. If the cost of the basic plan exceeds the amount of the state's contribution, the state shall deduct from or reduce the monthly compensation of the employee or shall deduct from the monthly retirement benefits of the annuitant an amount sufficient to pay the amount of the premiums not covered by the state's contribution].

(b) Any employer contributions remaining after the basic coverage has been funded may be allocated by the trustee to fund optional coverages in any manner the trustee determines is appropriate [If an employee or annuitant refuses in writing the coverages, benefits, or services provided by this Act by a statement in writing satisfactory to the trustee, then in no event shall the State of Texas or the employee's department make any contribution to the cost of any other coverages, services, or benefits on such employee or annuitant].

(c) The trustee may not allocate any employer contributions to fund voluntary coverages. Voluntary coverages must be funded solely by employee contributions [Except as provided by Subsection (d) of this section, if any employee or annuitant applies for coverages for which the cost exceeds the state's or the employing department's contribution under this Act, he shall authorize in writing and in a form satisfactory to the trustee a deduction from his monthly compensation or annuity the difference between the cost of coverages under the said group programs and the amount contributed therefor by the State of Texas or the employing department].

(d) If the cost of the basic coverage exceeds the amount of employer contributions allocated to fund the basic coverage, the state shall deduct from or reduce the monthly compensation of the employee and shall deduct from the retirement benefits of the annuitant an amount sufficient to pay the cost of the basic coverage [If an employee elects to participate in the cafeteria plan, he shall execute a salary reduction agreement under which his monthly compensation will be reduced in an amount that is equal to the difference between the amount contributed for the coverages by the State of Texas or the employing department and the cost of the coverages for which the employee is eligible to pay under the cafeteria plan. An employee who executes a salary reduction agreement for insurance coverages included in the cafeteria plan is considered to have elected to participate in the cafeteria plan and agreed to a salary reduction for the insurance coverages for subsequent plan years unless the participant, during an annual enrollment period specified by the trustee, explicitly elects not to participate for the next plan year in the insurance coverages. After electing not to participate in insurance coverages included in the cafeteria plan, an employee must, to reestablish participation for subsequent plan years in insurance coverages included in the cafeteria plan, execute a new salary reduction agreement. A salary reduction agreement for other benefits of the cafeteria plan must be executed annually, during the annual enrollment period specified by the trustee, for each plan year. The employee shall pay any remaining portion of the cost of benefits that is not covered by the state's or department's contributions and the salary reductions under the cafeteria plan by executing a payroll deduction agreement].

(e) The trustee shall apply the amount of any employer contribution allocated to fund optional coverages to the excess of the cost of the basic and optional coverages for which the employee or annuitant has applied over the basic coverage contribution. Except as provided by Subsection (h) of this section, if an employee or annuitant applies for basic and optional coverages for which the cost exceeds the contributions for those coverages under this Act, the employee or annuitant shall authorize in writing in a form satisfactory to the trustee a deduction from the employee's or annuitant's monthly compensation or annuity equal to the difference between the cost of basic and optional coverages for which the employee or annuitant has applied and the employer contributions for basic and optional coverage.

(f) Except as provided by Subsection (h) of this section, if an employee or annuitant applies for voluntary coverages, the employee shall authorize in writing in a form satisfactory to the trustee a deduction from the employee's monthly compensation or annuity equal to the cost of the voluntary coverages.

(g) If an employee or annuitant refuses the coverages or benefits provided under this Act in writing in a form satisfactory to the trustee, the state and the employee's department may not make any contribution to the cost of any coverages or benefits for the employee or annuitant.

(h) If an employee elects to participate in the cafeteria plan, the employee must execute a salary reduction agreement under which the employee's monthly compensation will be reduced in an amount that is equal to the difference between the employer contributions for basic and optional coverages and the cost of the cafeteria plan coverages identified by the trustee as comparable to the basic and optional coverages for which the employee is eligible. The salary reduction agreement must also provide for an additional reduction in the employee's compensation equal to the cost of voluntary coverages for which the employee has applied. An employee who executes a salary reduction agreement for insurance coverage included in the cafeteria plan has elected to participate in the cafeteria plan and agreed to a salary reduction for the insurance coverages for subsequent plan years unless the participant, during an annual enrollment period specified by the

trustee, elects in writing not to participate for the next plan year in the insurance coverages. An employee who has elected not to participate in the cafeteria plan insurance coverages may re-enroll by executing a new salary reduction agreement during a subsequent annual enrollment period. A salary reduction agreement for cafeteria plan benefits other than insurance coverages must be executed annually, during the annual enrollment period. The employee shall pay any remaining portion of the cost of benefits that is not covered by the contributions for basic and optional coverages and the salary reduction under the cafeteria plan by executing a payroll deduction agreement.

SECTION 32. Subpart C, Part 2, Article 6252-3g, Revised Statutes, is amended by adding Section 2.55 to read as follows:

Sec. 2.55. FIDUCIARY INSURANCE. In the administration of the deferred compensation programs under this article, the Employees Retirement System may purchase liability insurance for the coverage of the trustees, employees, and agents of the system in such amounts as the system, in its sole discretion, considers reasonable and necessary.

SECTION 33. (a) Except as provided by Subsection (b) of this section, annuities that are described by Section 814.107, 814.207, 814.305, or 814.601(a), Government Code, and that are based on service retirements, disability retirements, or deaths are increased as follows:

<u>Fiscal Year of Retirement</u>	<u>Increase</u>
1990	1 percent
1989	2 percent
1988	2 percent
1987	2 percent
1986	2 percent
1985	2 percent
1984	3 percent
1983	3 percent
1982	3 percent
1981	5 percent
1980	7 percent
1979	9 percent
1978	11 percent
1977	14 percent
1976	14 percent
1975	17 percent
1974	20 percent
1973	23 percent
1972	26 percent
1971	29 percent
1970	32 percent
1969	34 percent
1968	34 percent
1967	38 percent
1966	41 percent
1965	44 percent
1964	47 percent
1963	47 percent
1962	47 percent
1961	47 percent
1960	50 percent

1959	50 percent
1958	53 percent
1957	56 percent
1956	59 percent
1955	62 percent
1954	65 percent
1953 or earlier	65 percent

(b) Annuities are increased under Subsection (a) of this section only if the actuary for the Employees Retirement System of Texas certifies, based on an August 31, 1991, actuarial valuation, that all annuity increases and annuity recomputations required or authorized by this Act, together with all other actuarial liabilities resulting from legislation that is enacted by the 72nd Legislature in 1991 before August 31 and that has or will become law, will not cause the time required to amortize the unfunded actuarial liabilities of the retirement system to be increased to a period that exceeds 31 years. For purposes of this subsection, a bill will become law if it has not taken effect but either has been signed by the governor or the time provided for gubernatorial action under Article IV, Section 14, of the Texas Constitution, has expired without the governor having vetoed the bill. The increase in annuities under Subsection (a) of this section is payable beginning with the first monthly payments of the annuities that become due after the month in which the actuarial certification required by this subsection is made to the board of trustees of the retirement system.

SECTION 34. The board of trustees of the Employees Retirement System of Texas shall pay the annuity increases provided by Section 33 of this Act from the retirement annuity reserve account of the retirement system and may transfer to that account from the state accumulation account of the retirement system any portion of the amount that exceeds the amount in the retirement reserve account available to finance the increases in benefits, and that is actuarially determined to be necessary to finance the increases, for the duration of the annuities to which the increases apply.

SECTION 35. Sections 814.106, 814.209, 814.303, 814.502, and 814.504, Government Code, and Section 3(a)(17), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), are repealed.

SECTION 36. (a) This Act takes effect September 1, 1991, except Sections 16, 24, 27, and 32, which take effect August 26, 1991.

(b) The change in law made by this Act to Section 814.103, Government Code, applies to all annuities to which the section applies and that are being paid on or after the applicable effective date of this Act. The Employees Retirement System of Texas shall recompute under that section as amended by this Act any affected annuity that was computed under prior law. Payment of the recomputed annuity begins with the September 30, 1991, annuity payment.

SECTION 37. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment - Robnett

Amend C.S.S.B. 1331 as follows:

(1) Between Sections 1 and 2, insert the following sections, appropriately numbered:

Section 812.201(c), Government Code, is amended to read as follows:

(c) A person who is retired from the elected class of membership ~~and~~ who again holds ~~held~~ a position included in that class may elect ~~[after retirement, and who elected]~~ to become a member ~~again~~ by filing notice with the retirement system ~~[before December 31, 1983, may establish credit as provided by Section 813.402].~~ Except as provided by Section 812.203(e), when ~~[When]~~ benefit payments are resumed, the retirement system shall recompute the annuity selected at the time of the person's original retirement to include the additional service established during membership under this subsection.

SECTION ____ Section 812.202(b), Government Code, is amended to read as follows:

(b) The payment of benefits to a retiree for service credited in the employee class of membership is not affected by the retiree's taking, for nine ~~six~~ months or less within any fiscal year, a position included in the employee class.

SECTION ____ Sections 812.203(a), (b), and (e), Government Code, are amended to read as follows:

(a) The retirement system shall suspend annuity payments to a retiree for service that was credited to the retiree in the employee class if the retiree holds a position included in the employee class for more than nine ~~six~~ months in any one fiscal year:

(1) until the retiree no longer holds a position included in the employee class; or

(2) until the next fiscal year, whichever comes first.

(b) The board of trustees by rule shall determine what constitutes a month for purposes of this section. ~~[In determining the number of months a retiree has held a position included in the employee class, the retirement system shall consider as a full month any part of a month for which the retiree receives compensation for service in the position.]~~

(e) If a member who originally retired ~~[before January 1, 1975,]~~ with service credited at the time of that retirement only in the elected class of membership again retires, the person at the time of subsequent retirement may select an annuity based on service in the elected class as if the person were retiring for the first time. If the person selects an annuity under Section 814.108(c)(3) or (c)(4), the retirement system shall reduce the number of months of guaranteed payment by the number of months for which an annuity was paid under the person's original retirement.

(2) Between Sections 3 and 4, insert the following sections, appropriately numbered:

SECTION ____ Subchapter E, Chapter 813, Government Code, is amended by adding Section 813.405 to read as follows:

Sec. 813.405. CONTRIBUTIONS FOR SERVICE PREVIOUSLY CANCELED. (a) A member who has at least eight years of service credit in the elected class of membership, exclusive of military service, may establish credit for service previously canceled under the employee class of membership.

(b) A member may establish credit under this section by depositing with the retirement system in a lump sum:

(1) a contribution based on the monthly salary being paid to, and the rate of contributions required of, a person who holds, at the time the credit is sought, the office in the elected class the member most recently held;

(2) all membership fees due; and

(3) interest computed at the rate of 10 percent from the fiscal year in which the service was performed to the date of deposit.

SECTION ____ Section 813.503, Government Code, is amended to read as follows:

Sec. 813.503. CREDIT TRANSFERABLE BETWEEN ~~[FROM]~~ ELECTED AND ~~[TO]~~ EMPLOYEE CLASS. (a) A member may establish in, or

have transferred to, the employee class all service credited in the elected class, if the contributions made to establish the service in the elected class equal or exceed contributions required of a member of the employee class for the same amount of service during the same time and at the same rate of compensation. A member or retiree who has, or had at the time of retirement, at least eight years of service credit in the elected class of membership, exclusive of military service, may transfer service credit between classes before or after retirement [The member before retirement may transfer the service credit back to the elected class].

(b) A member or retiree who has, or had at the time of retirement, at least 20 years of service credit in the retirement system, including the sum of at least 10 years of service credit as a person who has been elected or appointed to two or more offices of a house of the legislature, as recorded in the journals of the senate and the house of representatives, may transfer the person's service credit to the elected class. A person who makes a transfer under this subsection may continue to transfer the credit between classes before or after retirement.

(c) A retiree, or the designated beneficiary of a deceased retiree, who retired from the employee class and was eligible to have retired from the elected class may elect to have the annuity recomputed as if the retirement had been from the elected class.

(d) A person may make a transfer or election under this section by notifying the retirement system. If the person making the transfer or election is a retiree or the designated beneficiary of a deceased retiree, payment of benefits under the recomputed annuity begins with the payment that becomes due in the month following the month in which the retirement system receives the notice.

SECTION ____ Section 814.102, Government Code, is amended to read as follows:

Sec. 814.102. ELIGIBILITY OF [CERTAIN] ELECTED MEMBERS FOR SERVICE RETIREMENT. [(a)] Except as provided by rule adopted under Section 813.304(d) or Section 803.202(2), a member who has [had] service credit in the elected class of membership [on August 31, 1983], is eligible to retire and receive a service retirement annuity if the member:

(1) is at least 60 years old and has 8 years of service credit in that class;

or

(2) is at least 50 [55] years old and has 12 years of service credit in that class.

[(b) A member who had service credit in the elected class on August 31, 1983; is eligible to retire and receive a service retirement annuity actuarially reduced from the standard service retirement annuity available under Subsection (a)(2), if the member is at least 50 years old and has 12 years of service credit in that class.]

SECTION ____ Section 814.103(b), Government Code, is amended to read as follows:

(b) The standard service retirement annuity for service credited in the elected class may not exceed at any time 100 [:

[(1) 60 percent of the state salary being paid a district judge, if the service was performed by a person whose membership in that class ended before September 1, 1983; or

[(2) 80] percent of the state salary being paid a district judge[; if the service was performed by a person who is a member of that class after August 31, 1983].

(3) Between Sections 6 and 7, insert the following section, appropriately numbered:

SECTION ____ Subchapter B, Chapter 814, Government Code, is amended by adding Section 814.1081 to read as follows:

Sec. 814.1081. CHANGE IN ANNUITY SELECTION. (a) A person who retired and selected an optional service retirement annuity approved by the board

of trustees or an optional service retirement annuity described by Section 814.108(c)(1) or (c)(2), and who designated a person as beneficiary who was not at the time of designation and is not currently the retiree's spouse or child may change the optional annuity selection to the selection of a standard service retirement annuity by filing with the retirement system a request to change the annuity selection.

(b) If a retiree files a request as provided by Subsection (a), the retirement system shall recompute the annuity as a standard service retirement annuity. The right to receive payment of an annuity as adjusted as provided by this section begins with the first payment that becomes due after the date a request is filed as provided by Subsection (a).

(4) Between Sections 15 and 16, insert the following section, appropriately numbered:

SECTION ____ Subchapter G, Chapter 814, Government Code, is amended by adding Section 814.602 to read as follows:

Sec. 814.602. ADJUSTMENT TO ANNUITIES. (a) Except as provided by Subsection (b), the board of trustees may adopt rules that adjust or modify annuities to the extent necessary to be consistent with changes in plan design. Any adjustment or modification must be made applicable to all members and annuitants who are similarly situated. Any rule adopted under this section supersedes conflicting portions of existing plan provisions and must be in compliance with Section 401(a) of the Internal Revenue Code of 1986 and Section 811.006.

(b) A rule adopted under this section may not result in a reduction in any existing annuity.

(5) Between Sections 18 and 19, insert the following section, appropriately numbered:

SECTION ____ Section 815.507, Government Code, is amended to read as follows:

Sec. 815.507. PLAN QUALIFICATION. (a) It is intended that the provisions of this subtitle be construed and administered in a manner that the retirement system's benefit plan will be considered a qualified plan under Section 401(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401). The board of trustees may adopt rules that modify the plan by adding, deleting, or changing a plan provision, including rules that modify benefits available under the plan.

(b) A rule reducing a benefit provision may not be adopted unless the modification is [to the extent] necessary for the retirement system to be a qualified plan.

(c) A rule adopted under this section, other than a rule adopted under Subsection (b), must be made applicable to all members and annuitants whose credit or benefits are based on similar service. A rule adopted under this section may include the making or revocation of any election permitted under Section 401(a) or any other provision of the Internal Revenue Code of 1986 (26 U.S.C. Section 401). A rule adopted under this section must comply with Section 811.006 and Section 401(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401). Rules adopted by the board of trustees are to be considered a part of the plan and supersede conflicting portions of existing plan provisions.

(d) [(b)] In determining qualification status under Section 401(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401), the retirement system's benefit plan shall be considered the primary retirement plan for members of the retirement system.

(6) Between Sections 31 and 32, insert the following sections, appropriately numbered:

SECTION ____ Section 1.34(a), Article 6252-3g, Revised Statutes, is amended to read as follows:

(a) The Employees Retirement System may [shall] assess a fee on [each] participating employees or vendors or both, in the manner and to the extent it determines necessary [employee that is sufficient] to cover the costs of administering the TexaSaver plan. The Employees Retirement System shall determine the method for calculating and assessing a [the] fee under this subsection.

SECTION ____ Section 2.43(a), Article 6252-3g, Revised Statutes, is amended to read as follows:

(a) The Employees Retirement System may [shall] assess a fee on [each] participating employees or vendors or both, in the manner and to the extent it determines necessary [employee that is sufficient] to cover the costs of administering the deferred compensation plan. The Employees Retirement System shall determine the method for calculating and assessing a [the] fee under this subsection.

(7) Between Sections 35 and 36, insert the following section, appropriately numbered:

SECTION ____ The board of trustees of the Employees Retirement System of Texas may use for the state deferred compensation programs created under Article 6252-3g, Revised Statutes, any available money in the fund created by Section 12(a), Chapter 500, Acts of the 52nd Legislature, 1951 (Article 695g, Vernon's Texas Civil Statutes).

(8) Renumber sections of the bill appropriately and, in the effective date section (Section 36 of the committee substitute), adjust the section numbers so that the sections for which the committee substitute provides an effective date of August 26, 1991, continue to refer to the same provisions. Also provide that the section in this amendment containing the amendment to Section 815.507, Government Code, take effect August 26, 1991, and that all other sections in this amendment take effect September 1, 1991.

Amendment on Third Reading - Robnett

Amend C.S.S.B. 1331 on third reading as follows:

(1) Amend C.S.S.B. 1331 on page 34, line 26, by adding the following language:

"Basic coverage shall include, but not be limited to, benefits and health care service required by state and federal law."

(2) Amend C.S.S.B. 1331 on page 33, line 11, by adding before the period the following language:

"and which is reasonable and assures employees and retired employee annuitants a fair choice among health benefit plans as set out in Section 14 of this Article."

(3) Amend C.S.S.B. 1331 on page 36, lines 17 and 18, by striking "consistent with applicable state and federal law" and inserting the following:

"reasonable and set in a manner which assures employees a fair choice among health benefit plans providing a basic plan. The contribution set for each employee shall be within the total amount appropriated in the General Appropriations Act."

(4) On page 33, strike lines 21-24 and substitute the following:

of the state]. Eligible employees and annuitants may participate in a selected health maintenance organization in lieu of participation in the health insurance benefits in the Employees Uniform Group Insurance Program, [and the employer contributions provided by

The amendments were read.

On motion of Senator Glasgow and by unanimous consent, the Senate concurred in the House amendments to S.B. 1331 by a viva voce vote.

RECORD OF VOTES

Senators Lyon, Truan, Dickson, Whitmire and Green asked to be recorded as voting "Nay" on the concurrence in the House amendments.

**CONFERENCE COMMITTEE REPORT
ON SENATE BILL 323**

Senator Green submitted the following Conference Committee Report:

Austin, Texas
May 24, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on S.B. 323 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

GREEN
LEEDOM
TEJEDA
WHITMIRE
ZAFFIRINI
On the part of the Senate

FINNELL
ROBNETT
STILES
GIBSON
BLACK
On the part of the House

**A BILL TO BE ENTITLED
AN ACT**

relating to the continuation and operation of the State Pension Review Board.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 801.102, Government Code, is amended to read as follows:

Sec. 801.102. **COMPOSITION OF BOARD.** (a) The board is composed of nine members.

(b) Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees.

SECTION 2. Subchapter B, Chapter 801, Government Code, is amended by adding Section 801.1021 to read as follows:

Sec. 801.1021. **CONFLICT PROVISIONS.** (a) A person is not eligible for appointment as a member of the board if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving funds from the board;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving funds from the board;
or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

(b) A person may not serve as a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter

305 because of the person's activities for compensation on behalf of a profession related to the operation of the board.

SECTION 3. Subchapter B, Chapter 801, Government Code, is amended by adding Section 801.1061 to read as follows:

Sec. 801.1061. REMOVAL. (a) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Section 801.103 or 801.104;

(2) does not maintain during service on the board the qualifications required by Section 801.103 or 801.104;

(3) violates a prohibition established by Section 801.1021;

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the ground. The presiding officer shall then notify the governor that a potential ground for removal exists.

SECTION 4. Section 801.107, Government Code, is amended to read as follows:

Sec. 801.107. APPLICATION OF SUNSET ACT. The board is subject to [the Texas Sunset Act] Chapter 325 (Texas Sunset Act). Unless the board is continued in existence as provided by that chapter [Act], the board is abolished and this chapter expires December 31, 1991. The abolition date prescribed by this subsection does not require the Sunset Advisory Commission to conduct any review or prepare any report other than the review undertaken before the convening of the 72nd Legislature, Regular Session, 1991, or the report submitted to that legislature.

SECTION 5. Section 801.111, Government Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the board.

(d) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for board employees must be based on the system established under this subsection.

SECTION 6. Subchapter B, Chapter 801, Government Code, is amended by adding Section 801.1111 to read as follows:

Sec. 801.1111. EQUAL EMPLOYMENT OPPORTUNITY. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the board work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underutilization in the board work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underutilization.

(b) A policy statement prepared under Subsection (a) must cover an annual period, be updated at least annually, and be filed with the governor's office.

(c) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as a part of other biennial reports made to the legislature.

SECTION 7. Subsection (c), Section 801.113, Government Code, is amended to read as follows:

(c) The governing board of any public retirement system may vote to make an annual contribution to the State Pension Review Board not to exceed 50 cents for each active member and annuitant of the retirement system as of September 1 of the year for which the contribution is made. The contribution is payable in a lump sum ~~[not later than October 1 of that year]~~.

SECTION 8. Subchapter B, Chapter 801, Government Code, is amended by adding Section 801.114 to read as follows:

Sec. 801.114. QUALIFICATIONS AND STANDARDS OF CONDUCT. The board shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

SECTION 9. Section 801.203, Government Code, is amended to read as follows:

Sec. 801.203. REPORTS [REPORT] TO LEGISLATURE AND GOVERNOR. (a) The board shall present to the legislature and the governor, in November of each even-numbered year, a public report explaining the work and findings of the board during the preceding two-year period and including drafts or recommendations of any legislation relating to public retirement systems that the board finds advisable.

(b) The board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

SECTION 10. Subchapter C, Chapter 801, Government Code, is amended by adding Section 801.206 to read as follows:

Sec. 801.206. PUBLIC ACCESS AND TESTIMONY. (a) The board shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the board's programs.

(b) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

SECTION 11. Section 802.001, Government Code, is amended to read as follows:

Sec. 802.001. DEFINITIONS. In this chapter:

(1) "Board" means the State Pension Review Board.

(2) "Governing body of a public retirement system" means the board of trustees, pension board, or other public retirement system governing body that has the fiduciary responsibility for assets of the system and has the duties of overseeing the investment and expenditure of funds of the system and the administration of benefits of the system.

(3) [(2)] "Public retirement system" means a continuing, organized program of service retirement, disability retirement, or death benefits for officers or employees of the state or a political subdivision, or of an agency or instrumentality of the state or a political subdivision, other than:

(A) a program providing only workers' compensation benefits;

(B) a program administered by the federal government;

(C) an individual retirement account or individual retirement annuity within the meaning of Section 408, or a retirement bond within the meaning of Section 409, of the Internal Revenue Code of 1986 (26 U.S.C. Sections 408, 409);

(D) a plan described by Section 401(d) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401);

(E) an individual account plan consisting of an annuity contract described by Section 403(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section 403);

(F) an eligible state deferred compensation plan described by Section 457(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section 457); or

(G)(i) in Sections 802.104 and 802.105 of this chapter, a program for which benefits are administered by a life insurance company; and

(ii) in the rest of this chapter, a program for which the only funding agency is a life insurance company.

SECTION 12. Section 802.104, Government Code, is amended to read as follows:

Sec. 802.104. **REPORT OF MEMBERS AND RETIREES.** Each public retirement system annually shall, before the 211th [210th] day after the last day of the fiscal year under which the system operates, submit to the board [State Pension Review Board] a report containing the number of members and number of retirees of the system as of the last day of the immediately preceding fiscal year.

SECTION 13. Section 802.301, Government Code, is amended to read as follows:

Sec. 802.301. **[WHEN] ACTUARIAL IMPACT STATEMENTS [ANALYSIS REQUIRED].** (a) Except as provided by Subsection (g) [(f)], a bill or resolution that proposes to change the amount or number of benefits or participation in benefits of a public retirement system or that proposes to change a fund liability of a public retirement system is required to have attached to it an actuarial impact statement [analysis] as provided by this section [subchapter].

(b) An actuarial impact statement [analysis] required by this section must:

(1) summarize the actuarial analysis prepared under Section 802.302 for the bill or resolution accompanying the actuarial impact statement;

(2) identify and comment on the reasonableness of each actuarial assumption used in the actuarial analysis under Subdivision (1); and

(3) include other information determined necessary by board rule [be prepared by an actuary who is a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the Employees Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).]

(c) The board is primarily responsible for preparing a required actuarial impact statement under this section.

(d) A required actuarial impact statement [analysis] must be attached to the bill or resolution:

(1) [at the time it is filed for introduction in either house of the legislature and] before a committee hearing on the bill or resolution is held; and

(2) at the time it is reported from a legislative committee of either house for consideration by the full membership of a house of the legislature.

(e) [(d)] An actuarial impact statement [analysis] must remain with the bill or resolution to which it is attached throughout the legislative process, including the process of submission to the governor.

(f) [(e)] A bill or resolution for which an actuarial impact statement [analysis] is required is exempt from the requirement of a fiscal note as provided by Chapter 314.

(g) [(f)] An actuarial impact statement [analysis] is not required for a bill or resolution that proposes to have an economic effect on a public retirement system only by providing new or increased administrative duties.

SECTION 14. Subchapter D, Chapter 802, Government Code, is amended by amending Section 802.302 and adding Section 802.3021 to read as follows:

Sec. 802.302. PREPARATION OF ACTUARIAL ANALYSIS [~~ACTION BY STATE PENSION REVIEW BOARD~~]. (a) The board shall request a public retirement system affected by a bill or resolution as described by Section 802.301(a) to provide the board with an actuarial analysis [~~When a bill or resolution for which an actuarial analysis is required is filed for introduction in either house of the legislature, the office in which the proposed legislation is filed shall send a copy of the bill or resolution, accompanied by an actuarial analysis as required by Section 802.301(c)(1), to the State Pension Review Board~~].

(b) An actuarial analysis required by this section must be prepared by an actuary who is a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the Employees Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

(c) A public retirement system that receives a request under Subsection (a) must provide the board with an actuarial analysis on or before the 21st day after the date of the request, if the request relates to a bill or resolution introduced for consideration during a regular legislative session.

(d) The board shall adopt deadlines for the provision under this section of an actuarial analysis that relates to a bill or resolution introduced for consideration during a called legislative session. The deadlines must be designed to provide the most complete information practicable in a timely manner.

(e) The board may prepare an actuarial analysis for a public retirement system that receives a request under Subsection (a) and does not provide the board with an actuarial analysis within the required period under Subsection (c) or (d).

(f) The public retirement system shall reimburse the board's costs incurred in preparing an actuarial analysis under Subsection (e).

(g) For each actuarial analysis that a public retirement system prepares, the board shall [~~The State Pension Review Board may~~] have a second actuary:

(1) [(either)] review the actuarial analysis accompanying the bill or resolution; and

(2) comment on the reasonableness of each actuarial assumption used in the public retirement system's [~~or prepare a separate~~] actuarial analysis.

(h) Even if a public retirement system prepares an actuarial analysis under Subsection (c) or (d), the board may have a second actuary prepare a separate actuarial analysis.

(i) A public retirement system is not prohibited from providing to the legislature any actuarial analysis or information that the system determines necessary or proper.

Sec. 802.3021. STATE PENSION REVIEW BOARD ACTUARY. [(c)] An actuary who reviews or prepares an actuarial analysis for the board [~~State Pension Review Board~~] must have at least five years of experience as an actuary working with one or more public retirement systems and must be a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the Employees Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

SECTION 15. Subchapter D, Chapter 802, Government Code, is amended by adding Section 802.305 to read as follows:

Sec. 802.305. REPORTS, ANALYSES, AND ACTUARIAL IMPACT STATEMENTS FOR CERTAIN BILLS AND RESOLUTIONS. (a) The board may request a state-financed public retirement system to provide the board with:

(1) a report listing and totalling the actuarial effect of all public retirement bills and resolutions that have been presented in public hearings in either house of the legislature during the current legislative session and that affect the state-financed public retirement system; or

(2) an analysis of the actuarial effect of all public retirement bills and resolutions that have been passed by at least one house of the legislature during the current legislative session and that affect the state-financed public retirement system, assuming that each bill and resolution becomes law.

(b) A state-financed public retirement system that receives a request under Subsection (a) must provide the board with the requested report or analysis on or before the 21st day after the date of the request, if the request is made during a regular legislative session. If the state-financed public retirement system does not provide the board with the requested report or analysis within the 21-day period, the board may prepare the requested report or analysis.

(c) If the board prepares a requested report or analysis under Subsection (b), the state-financed public retirement system shall reimburse the board's costs incurred in preparing the requested report or analysis.

(d) Even if a public retirement system prepares a required report or analysis under Subsection (b), the board may have a second actuary prepare a separate report or analysis.

(e) On or before the 70th day before the last possible day of each regular session of the legislature, the board shall provide the presiding officer of the committee responsible for retirement legislation in each house of the legislature an actuarial impact statement listing and totalling for each state-financed public retirement system the actuarial effect of all public retirement bills and resolutions that have been presented in public hearings in either house of the legislature during that legislative session and that affect that state-financed public retirement system.

(f) On or before the 30th day before the last possible day of each regular session of the legislature, the board shall provide the presiding officer of the committee responsible for retirement legislation in each house of the legislature an actuarial impact statement analyzing for each state-financed public retirement system the actuarial effect of all public retirement bills and resolutions that have been passed by at least one house of the legislature during that legislative session and that affect that state-financed public retirement system, assuming that each of the bills and resolutions becomes law.

(g) The board also shall provide the statements required by Subsections (e) and (f) during a called legislative session.

(h) The board shall adopt deadlines for the provision under this section of a report, analysis, or actuarial impact statement that relates to a bill or resolution introduced for consideration during a called legislative session. The deadlines must be designed to provide the most complete information practicable in a timely manner.

(i) In this section:

(1) "Public retirement bill or resolution" means a bill or resolution that proposes to change the amount or number of benefits or participation in benefits of a state-financed public retirement system or that proposes to change a fund liability of a state-financed public retirement system.

(2) "State-financed public retirement system" means the Employees Retirement System of Texas, including the law enforcement and custodial officer supplemental retirement fund, or the Teacher Retirement System of Texas.

SECTION 16. Section 801.105, Government Code, is repealed.

SECTION 17. (a) The changes in law made by this Act in the qualifications of a person appointed to the State Pension Review Board apply only to a member appointed on or after September 1, 1991.

(b) The changes in law made by this Act in the maintenance of qualifications of a person appointed to the State Pension Review Board apply only to a member appointed on or after September 1, 1991.

(c) The first policy statement required to be filed under Section 801.1111, Government Code, as added by this Act, must be filed before November 1, 1991.

SECTION 18. This Act takes effect September 1, 1991.

SECTION 19. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

**CONFERENCE COMMITTEE REPORT
ON HOUSE BILL 591**

Senator Lucio submitted the following Conference Committee Report:

Austin, Texas
May 23, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 591** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

LUCIO
MONCRIEF
BROWN
LEEDOM
TEJEDA
On the part of the Senate

JOHNSON
JONES
PATTERSON
LINEBARGER
CHISUM
On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

(President in Chair)

**COMMITTEE SUBSTITUTE
HOUSE BILL 2825 ON SECOND READING**

On motion of Senator Glasgow and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2825, Relating to an action on a debt secured by real property sold at a judicial or nonjudicial foreclosure sale.

The bill was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2825 ON THIRD READING**

Senator Glasgow moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that C.S.H.B. 2825 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE
HOUSE JOINT RESOLUTION 114 ON SECOND READING**

On motion of Senator Glasgow and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.J.R. 114, Proposing a constitutional amendment relating to the amending of a home rule charter by a city with a population of 5,000 or less.

The resolution was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE JOINT RESOLUTION 114 ON THIRD READING**

Senator Glasgow moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **C.S.H.J.R. 114** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The resolution was read third time and was passed by the following vote: Yeas 31, Nays 0.

CONFERENCE COMMITTEE ON HOUSE BILL 2004

Senator Carriker called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 2004** and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on **H.B. 2004** before appointment.

There were no motions offered.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Carriker, Chair; Brooks, Truan, Zaffirini, Moncrief.

SENATE BILL 1099 WITH HOUSE AMENDMENTS

Senator Carriker called **S.B. 1099** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amendment - Alexander

Amend **S.B. 1099** by substituting the following:

A BILL TO BE ENTITLED
AN ACT

relating to permits for certain facilities regulated by the Texas Air Control Board, the Texas Water Commission, or the Texas Department of Health, to pollution prevention, and to the disposal of certain solid waste; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE I

SECTION 1.01. Section 361.003, Health and Safety Code, is amended to read as follows:

Sec. 361.003. DEFINITIONS. Unless the context requires a different definition, in this chapter:

(1) "Apparent recharge zone" means that recharge zone designated on maps prepared or compiled by, and located in the offices of, the commission.

(2) "Board of health" means the Texas Board of Health.

(3) "Class I industrial solid waste" means an industrial solid waste or mixture of industrial solid waste, including hazardous industrial waste, that because of its concentration or physical or chemical characteristics:

(A) is toxic, corrosive, flammable, a strong sensitizer or irritant, or a generator of sudden pressure by decomposition, heat, or other means; and

(B) poses or may pose a substantial present or potential danger to human health or the environment if improperly processed, stored, transported, or otherwise managed.

(4) "Class I nonhazardous industrial solid waste" means any Class I industrial solid waste that has not been identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.).

(5) "Commercial hazardous waste management facility" means any hazardous waste management facility that accepts hazardous waste or PCBs for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person, where "captured facility" means a manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(6) "Commission" means the Texas Water Commission.

(7) [(6)] "Commissioner" means the commissioner of health.

(8) [(7)] "Composting" means the controlled biological decomposition of organic solid waste under aerobic conditions.

(9) [(8)] "Department" means the Texas Department of Health.

(10) [(9)] "Disposal" means the discharging, depositing, injecting, dumping, spilling, leaking, or placing of solid waste or hazardous waste, whether containerized or uncontainerized, into or on land or water so that the solid waste or hazardous waste or any constituent thereof may be emitted into the air, discharged into surface water or groundwater, or introduced into the environment in any other manner.

(11) [(10)] "Environmental response law" means the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601 through 9675, as amended by the Superfund Amendments and Reauthorization Act of 1986.

(12) [(11)] "Executive director" means the executive director of the commission.

(13) [(12)] "Garbage" means solid waste that is putrescible animal and vegetable waste materials from the handling, preparation, cooking, or consumption of food, including waste materials from markets, storage facilities, and the handling and sale of produce and other food products.

(14) [(13)] "Hazardous substance":

(A) means:

(i) a substance designated under Section 311(b)(2)(A) of the Federal Water Pollution Control Act, as amended (33 U.S.C. Section 1321);

(ii) an element, compound, mixture, solution, or substance designated under Section 102 of the environmental response law;

(iii) a hazardous waste having the characteristics identified under or listed under Section 3001 of the federal Solid Waste Disposal Act, as amended (42 U.S.C. Section 6921), excluding waste, the regulation of which under the federal Solid Waste Disposal Act (42 U.S.C. Section 6901 et seq.) has been suspended by Act of Congress;

(iv) a toxic pollutant listed under Section 307(a) of the Federal Water Pollution Control Act (33 U.S.C. Section 1317);

(v) a hazardous air pollutant listed under Section 112 of the federal Clean Air Act, as amended (42 U.S.C. Section 7412); and

(vi) any imminently hazardous chemical substance or mixture with respect to which the administrator of the Environmental Protection Agency has taken action under Section 7 of the Toxic Substances Control Act (15 U.S.C. Section 2606); but

(B) does not include:

(i) petroleum, which means crude oil or any fraction of crude oil that is not otherwise specifically listed or designated as a hazardous substance under Paragraphs (i) through (vi) of Subdivision (A);

(ii) natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel mixtures of natural gas and synthetic gas; or

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources or any other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code.

(15) [(14)] "Hazardous waste" means solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

(16) "Hazardous waste management facility" means all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly or privately owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

(17) "Hazardous waste management unit" means a landfill, surface impoundment, waste pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

(18) "Industrial furnace" includes cement kilns, lime kilns, aggregate kilns, phosphate kilns, coke ovens, blast furnaces, smelting, melting, or refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, or foundry furnaces, titanium dioxide chloride process oxidation reactors, methane reforming furnaces, pulping liquor recovery furnaces, combustion devices used in the recovery of sulfur values from spent sulfuric acid, and other devices the commission may list.

(19) [(15)] "Industrial solid waste" means solid waste resulting from or incidental to a process of industry or manufacturing, or mining or agricultural operations.

(20) [(16)] "Local government" means:

(A) a county;

(B) a municipality; or

(C) a political subdivision exercising the authority granted under Section 361.165.

(21) [(17)] "Management" means the systematic control of the activities of generation, source separation, collection, handling, storage, transportation, processing, treatment, recovery, or disposal of solid waste.

(22) "Motor vehicle" has the meaning assigned by Section 2(b), Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).

(23) [(18)] "Municipal solid waste" means solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial solid waste.

(24) [(19)] "Notice of intent to file an application" means the notice filed under Section 361.063.

(25) "PCBs" or "polychlorinated biphenyl compounds" means compounds subject to Title 40, Code of Federal Regulations, Part 761.

(26) [(20)] "Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(27) [(21)] "Person affected" means a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government:

(A) is a resident of a county, or a county adjacent or contiguous to the county, in which a solid waste facility is to be located; or

(B) is doing business or owns land in the county or adjacent or contiguous county.

(28) [(22)] "Processing" means the extraction of materials from or the transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal. The term includes the treatment or neutralization of hazardous waste designed to change the physical, chemical, or biological character or composition of a hazardous waste so as to neutralize the waste, recover energy or material from the waste, render the waste nonhazardous or less hazardous, make it safer to transport, store, or dispose of, or render it amenable for recovery or storage, or reduce its volume. The term does not include activities concerning those materials exempted by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), unless the commission or department determines that regulation of the activity under this chapter is necessary to protect human health or the environment.

(29) [(23)] “Radioactive waste” means waste that requires specific licensing under Chapter 401 and the rules adopted by the board of health under that law.

(30) [(24)] “Recycling” means the legitimate use, reuse, or reclamation of solid waste.

(31) [(25)] “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. The term does not include:

(A) a release that results in an exposure to a person solely within a workplace, concerning a claim that the person may assert against the person’s employer;

(B) an emission from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(C) a release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. Section 2011 et seq.), if the release is subject to requirements concerning financial protection established by the Nuclear Regulatory Commission under Section 170 of that Act;

(D) for the purposes of Section 104 of the environmental response law, or other response action, a release of source, by-product, or special nuclear material from a processing site designated under Section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. Sections 7912 and 7942); and

(E) the normal application of fertilizer.

(32) [(26)] “Remedial action” means an action consistent with a permanent remedy taken instead of or in addition to a removal action in the event of a release or threatened release of a hazardous waste into the environment to prevent or minimize the release of hazardous waste so that the hazardous waste does not migrate to cause an imminent and substantial danger to present or future public health and safety or the environment. The term includes:

(A) actions at the location of the release, including storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous waste or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive waste, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternate water supplies, and any monitoring reasonably required to assure that those actions protect the public health and safety or the environment; and

(B) the costs of permanent relocation of residents, businesses, and community facilities if the administrator of the United States Environmental Protection Agency or the executive director determines that, alone or in combination with other measures, the relocation:

(i) is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition off-site of hazardous waste; or

(ii) may otherwise be necessary to protect the public health or safety.

(33) [(27)] “Removal” includes:

(A) cleaning up or removing released hazardous waste from the environment;

(B) taking necessary action in the event of the threat of release of hazardous waste into the environment;

(C) taking necessary action to monitor, assess, and evaluate the release or threat of release of hazardous waste;

(D) disposing of removed material;
 (E) erecting a security fence or other measure to limit access;

(F) providing alternate water supplies, temporary evacuation, and housing for threatened individuals not otherwise provided for;
 (G) acting under Section 104(b) of the environmental response law;

(H) providing emergency assistance under the federal Disaster Relief Act of 1974 (42 U.S.C. Section 5121 et seq.); or

(I) taking any other necessary action to prevent, minimize, or mitigate damage to the public health and welfare or the environment that may otherwise result from a release or threat of release.

(34) [(28)] "Rubbish" means nonputrescible solid waste, excluding ashes, that consists of:

(A) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; and

(B) noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (1,600 to 1,800 degrees Fahrenheit).

(35) [(29)] "Sanitary landfill" means a controlled area of land on which solid waste is disposed of in accordance with standards, rules, or orders established by the board of health or the commission.

(36) [(30)] "Sludge" means solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, excluding the treated effluent from a wastewater treatment plant.

(37) [(31)] This subdivision expires on delegation of the Resource Conservation and Recovery Act authority to the Railroad Commission of Texas. "Solid waste" means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term:

(A) does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(ii) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901 et seq.); and

(B) does include hazardous substances, for the purposes of Sections 361.271 through 361.277, 361.280, and 361.343 through 361.345.

(38) [(32)] This subdivision is effective on delegation of the Resource Conservation and Recovery Act authority to the Railroad Commission of Texas. "Solid waste" means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term:

(A) does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(ii) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code; and

(B) does include hazardous substances, for the purposes of Sections 361.271 through 361.277, 361.280, and 361.343 through 361.345.

(39) [(33)] "Solid waste facility" means all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of solid waste. The term includes a publicly or privately owned solid waste facility consisting of several processing, storage, or disposal operational units such as one or more landfills, surface impoundments, or a combination of units.

(40) [(34)] "Solid waste technician" means an individual who is trained in the practical aspects of the design, operation, and maintenance of a solid waste facility in accordance with standards, rules, or orders established by the board of health or commission.

(41) [(35)] "Storage" means the temporary holding of solid waste, after which the solid waste is processed, disposed of, or stored elsewhere.

SECTION 1.02. Section 361.019, Health and Safety Code, is amended to read as follows:

Sec. 361.019. APPROVAL OF INDUSTRIAL SOLID WASTE MANAGEMENT IN MUNICIPAL SOLID WASTE FACILITY [BY APPROPRIATE STATE AGENCY IF MIXING CERTAIN WASTES]. (a) Except as provided by Subsection (b), Class I nonhazardous industrial solid waste and small quantities of hazardous waste generated by conditionally exempt small quantity generators, as defined by the commission, may be accepted in a municipal solid waste facility if:

(1) authorized in writing by, or by rule of, the department with the written approval of, or by rule of, the commission; and

(2) the generator of the Class I nonhazardous waste certifies on an appropriate commission form that the waste is not a hazardous waste.

(b) Except as otherwise prohibited by this chapter, nonhazardous industrial solid waste generated by the mechanical shredding of motor vehicles, appliances, or other items of scrap, used, or obsolete metals shall be accepted, without authorization by the department or approval of the commission under Subsection (a), in a municipal solid waste facility that has previously been authorized to accept and has accepted this type of waste if the waste contains no free liquids, is not a hazardous waste as defined in Section 361.003, and satisfies other criteria that may be established by commission rule. Until the commission adopts rules establishing additional criteria, generators of this type of waste shall satisfy the two criteria

described in this subsection when these wastes are disposed of in municipal solid waste facilities.

(c) Solid waste under the department's jurisdiction may be accepted in an industrial solid waste facility if authorized in writing by the commission with the written approval of the department.

SECTION 1.03. Subchapter B, Chapter 361, Health and Safety Code, is amended by adding Sections 361.0232, 361.0233, and 361.0234 to read as follows:

Sec. 361.0232. ASSESSMENT OF COMMERCIAL HAZARDOUS WASTE MANAGEMENT CAPACITY. (a) Not later than January 1, 1992, the commission shall assess the need for commercial hazardous waste management capacity. In making the assessment, the commission shall consider the need for various technologies for commercial waste disposal and shall evaluate the need for disposal capacity on a technology-by-technology basis. At a minimum, the commission shall assess separately the need for metals recovery, solvent recovery, other recovery such as nonsolvent organic recovery and acid regeneration, incineration of liquids, incineration of sludge or solids, energy recovery, aqueous inorganic treatment, aqueous organic treatment, other treatment such as neutralization and gas incineration, sludge treatment, stabilization, land treatment, landfill, deep well injection, and other disposal such as ocean dumping and depositing wastes in salt mines. The commission shall adopt rules based on the assessment.

(b) In evaluating need and drafting rules under this section, the commission shall consider:

- (1) demand for commercial hazardous waste capacity in the state;
- (2) availability of commercial hazardous waste capacity to small quantity generators;
- (3) demand for noncommercial hazardous waste capacity in the state;
- (4) demand for nonhazardous waste capacity in the state;
- (5) permitted commercial hazardous waste capacity in the state;
- (6) permitted commercial nonhazardous waste capacity in the state;
- (7) anticipated waste reduction capability;
- (8) potential increases in substances defined as hazardous waste;
- (9) the preferences established by Section 361.023;
- (10) the effect of any rules adopted under this section on the status of federal funds and any federally delegable programs;
- (11) research on new technology; and
- (12) any other relevant information.

(c) In developing this assessment, the commission shall consider the need to maintain an appropriate reserve capacity in the state to assure continuity of hazardous waste management and an effective enforcement program while encouraging waste reduction and recycling and recovery.

Sec. 361.0233. ASSESSMENT OF COMMERCIAL NONHAZARDOUS SOLID WASTE DISPOSAL CAPACITY. (a) Not later than March 1, 1996, the commission in consultation with the department shall assess the need for commercial nonhazardous solid waste disposal capacity in the state. In making the assessment, the commission and department shall consider the need for various technologies for commercial nonhazardous waste disposal and shall evaluate the need for disposal capacity on a technology-by-technology basis. The commission and the department shall adopt rules based on the assessment.

(b) In evaluating need and drafting rules under this section, the commission and department shall consider:

- (1) demand for nonhazardous waste capacity in the state;
- (2) permitted commercial hazardous waste capacity in the state;

- (3) permitted commercial nonhazardous waste capacity in the state;
- (4) anticipated waste reduction capability;
- (5) potential increases in substances defined as hazardous waste;
- (6) the preferences established by Section 361.022;
- (7) the effect of any rules adopted under this section on the status of federal funds and any federally delegable programs;
- (8) research on new technology; and
- (9) any other relevant information.

(c) The commission and department shall also consider:

- (1) the continued viability of industrial solid waste management in municipal solid waste facilities, under Section 361.019; and
- (2) the geographic location of all commercial disposal facilities relative to the location of industrial solid waste generators.

Sec. 361.0234. RULES; UPDATE OF RULES AND ASSESSMENTS. (a) To expedite the consideration of permits for technologies that an assessment prepared under Section 361.0232 or 361.0233 determines to be most needed, the rules adopted by the commission or department shall provide for a permitting process that encourages the development of new and innovative disposal technologies, grants preferences considering the hierarchies established by Sections 361.022 and 361.023, emphasizes waste reduction efforts, and encourages applicants for permits for hazardous waste management facilities to include recycling and recovery components where appropriate.

(b) The commission and department, as appropriate, shall update the assessments and related rules at least every two years. In preparing an update of the assessment, the commission and department shall consider source reduction and waste minimization plans and reports submitted under Subchapter N.

SECTION 1.04. Section 361.079(a), Health and Safety Code, is amended to read as follows:

(a) Except as provided by Sections 361.080(b) and 361.081(c), the [The] board of health and the commission by rule shall establish procedures for public notice and a public hearing under Section 361.080 or 361.081.

SECTION 1.05. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.0791 to read as follows:

Sec. 361.0791. PUBLIC MEETING AND NOTICE REQUIREMENT. (a) Notwithstanding other law, the commission shall hold a public meeting on an application for a new hazardous waste management facility in the county in which the proposed hazardous waste management facility is to be located. The commission, on request of a person affected or as otherwise required by commission rule, shall hold a public meeting on an application for a Class 3 modification or a major amendment to an existing facility's hazardous waste permit.

(b) A public meeting held as part of a local review process under Section 361.063 meets the requirement of Subsection (a) if notice is provided as required by this section.

(c) A public meeting under this section is not a contested case hearing under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(d) If a meeting is required under Subsection (a), not less than once each week during the three weeks preceding a public meeting, the applicant shall publish notice of the meeting in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located or, if no newspaper is published in the county, in a newspaper of general circulation in the county. The applicant shall provide the commission, department, or Texas Air Control Board, as appropriate, an affidavit certifying that the notice was given as required by this section. Acceptance of the affidavit creates a rebuttable presumption that the applicant has complied with this section.

(e) The published notice may not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches and shall contain, at a minimum, the following information:

- (1) the permit application number;
- (2) the applicant's name;
- (3) the proposed location of the facility; and
- (4) the location and availability of copies of the permit application.

(f) The applicant shall pay the cost of notice required to be provided under this section. The commission by rule may establish procedures for payment of those costs.

SECTION 1.06. Section 361.080, Health and Safety Code, is amended to read as follows:

Sec. 361.080. HEARING CONCERNING PERMIT APPLICATION FOR HAZARDOUS INDUSTRIAL SOLID WASTE FACILITY. (a) A hearing on an application for a permit concerning a hazardous industrial solid waste facility must include one session held in the county in which the facility is located.

(b) Notice for a hearing session held under this section shall be provided in accordance with Section 361.0791.

SECTION 1.07. Section 361.081, Health and Safety Code, is amended to read as follows:

Sec. 361.081. NOTICE OF HEARING CONCERNING APPLICATION FOR A SOLID WASTE FACILITY ~~[LANDFILL PERMIT]~~. (a) The department or the commission, whichever is appropriate, shall require the applicant to mail notice to each residential or ~~[residence;]~~ business address located within one-half mile of a new solid waste management facility ~~[;]~~ and to each owner of real property located within one-half ~~[three-fourths of one]~~ mile of a new solid waste management facility ~~[proposed landfill]~~ listed in the real property appraisal records of the appraisal district in which the solid waste management facility ~~[landfill]~~ is sought to be permitted as of the date the department or commission, whichever is appropriate, determines the permit application is administratively complete. The notice must be sent by ~~[certified or registered]~~ mail~~;~~ return receipt requested~~;~~ and must be deposited with the United States postal service not more than 45 days or less than 30 days before the date of the hearing.

(b) The applicant must certify (department shall presume that the notice requirements under Subsection (a) have been complied with on the applicant's verification) to the department or commission that the mailings were deposited as required by Subsection (a) [that subsection unless it is demonstrated by at least 35 percent of the affected parties that the applicant did not comply with that subsection]. Acceptance of the certification creates a rebuttable presumption that the applicant has complied with this section.

(c) In addition to the requirements of Subsection (a), the department or commission, whichever is appropriate, shall hold a public meeting and the applicant shall give notice concerning the application for a permit for a new hazardous waste management facility as provided by Section 361.0791.

SECTION 1.08. Section 361.082, Health and Safety Code, is amended to read as follows:

Sec. 361.082. APPLICATION FOR HAZARDOUS WASTE PERMIT; NOTICE AND HEARING. (a) A person may not process, store, or dispose of hazardous waste without having first obtained a hazardous waste permit issued by the commission.

(b) On its own motion or the request of a person affected, the commission may hold a public hearing on an application for a hazardous waste permit in accordance with this subchapter.

(c) The commission by rule shall establish procedures for public notice and public hearing. At a minimum, the rules shall include the public notice requirements set forth in Section 361.081.

(d) In addition to the hearing held under this section, the commission shall hold a public meeting and the applicant shall give notice as provided by Section 361.0791.

(e) The commission may include any requirement in the permit for remedial action by the applicant that the commission determines is necessary to protect the public health and safety and the environment.

(f) [(e)] An owner or operator of a facility that is in existence on the effective date of a statutory or regulatory change that subjects the owner or operator to a requirement to obtain a hazardous waste permit [A person who, on or before November 19, 1980, began on-site processing, storing, or disposing of hazardous waste under this section and] who has filed a hazardous waste permit application in accordance with commission rules may continue to process, store, or dispose of hazardous waste until the commission approves or denies the application, except as provided by Section 361.110 or, if the owner or operator becomes subject to a requirement to obtain a hazardous waste permit after November 8, 1984, except as provided by United States Environmental Protection Agency or commission rules relative to termination of interim status.

(g) On request under Section 361.082 by a person affected for a hearing on the permit application, the applicant for a permit for a new hazardous waste management facility shall furnish a bond or other financial assurance authorized by the commission to guarantee payment of the costs of a person affected who provides information to the commission on the question of the issuance of the permit and who is entitled to those costs under an order made as provided by Section 361.0833. For applications involving commercial hazardous waste management facilities, the bond or other financial assurance must be in the amount of \$100,000. For applications that do not involve commercial hazardous waste management facilities, the bond or other financial assurance must be in the amount of \$20,000.

SECTION 1.09. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Sections 361.0831 and 361.0832 to read as follows:

Sec. 361.0831. EX PARTE CONTACTS PROHIBITED. (a) Unless required for the disposition of ex parte matters authorized by law, a hearings examiner of the commission may not communicate, directly or indirectly, with any employee of the commission, any commissioner, or any party to a hearing conducted by the commission in connection with any issue of fact or law pertaining to a contested case in which the commission or party is involved.

(b) An employee of the commission, a commissioner, or a party to a hearing conducted by the commission may not attempt to influence the finding of facts or the application of law or rules by a hearings examiner of the commission except by proper evidence, pleadings, and legal argument with notice and opportunity for all parties to participate.

(c) If a prohibited contact is made, the hearings examiner shall notify all parties with a summary of that contact and notice of their opportunity to participate and shall give all parties an opportunity to respond.

Sec. 361.0832. PROPOSAL FOR DECISION; CERTIFIED ISSUES; REVERSAL BY COMMISSION. (a) After hearing evidence and receiving legal arguments, a hearings examiner of the commission shall make findings of fact, conclusions of law, and any ultimate findings required by statute, all of which shall be separately stated. The hearings examiner shall make a proposal for decision to the commission and shall serve the proposal for decision on all parties. The commission shall consider and act on the proposal for decision.

(b) If a contested case involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the

discretion or judgment of the commission by law, a hearings examiner, on joint motion of all parties or sua sponte, may certify those policy issues to the commission. A certification request must contain a statement of the policy issue to be determined and a statement of all relevant facts sufficient to show fully the nature of the controversy. The commission may receive written or oral statements from parties to the hearing or the hearings examiner on the policy issue certified. The commission must answer policy issues not later than the 60th day after the date of certification or, in its discretion, may decline to answer. If the commission fails to answer a policy issue within that period, the commission shall be deemed to have declined to answer. The hearings examiner shall proceed with the contested case and make a proposal for decision as required by Subsection (a).

(c) The commission may overturn an underlying finding of fact that serves as the basis for a decision in a contested case only if the commission finds that the finding was not supported by the great weight of the evidence.

(d) The commission may overturn a conclusion of law in a contested case only on the grounds that the conclusion was clearly erroneous in light of precedent and applicable rules.

(e) If a decision in a contested case involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the commission by law, the commission may reject a proposal for decision as to the ultimate finding for reasons of policy only.

(f) The commission shall issue written rulings, orders, or decisions in all contested cases and shall fully explain in a ruling, order, or decision the reasoning and grounds for overturning each finding of fact or conclusion of law or for rejecting any proposal for decision on an ultimate finding.

SECTION 1.10. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.0833 to read as follows:

Sec. 361.0833. COSTS FOR INFORMATION PROVIDED BY A PERSON AFFECTED REGARDING HAZARDOUS WASTE PERMIT. (a) After considering the factors in Subsection (e), the commission may order the applicant for a permit for a new hazardous waste management facility to pay reasonable costs incurred by a person affected in presenting information set out in Subsection (b) to the commission on the question of the issuance of the permit.

(b) Information for which an award of costs under Subsection (a) may be made includes:

(1) technical studies of the area in which the new hazardous waste facility is proposed to be located;

(2) expert testimony given at a hearing on the permit application; and

(3) surveys of land use and potential use in the hazardous waste facility area.

(c) The commission may order the applicant for a permit for a new hazardous waste management facility to pay reasonable costs incurred by a person affected who presented information to the commission at a hearing showing that the applicant:

(1) knowingly made false or misleading statements in the application;

(2) knowingly made false or misleading statements during the hearing;

or

(3) failed to present information that the applicant had in its possession that would have materially affected the issues of fact and law upon which the decision of the commission was based.

(d) The total costs awarded to all persons affected under Subsection (a) may not exceed \$100,000 for a new commercial hazardous waste management facility or \$20,000 for a new noncommercial hazardous waste management facility. The total costs awarded to all persons affected under Subsection (c) may not exceed \$150,000

for a new commercial hazardous waste management facility or \$30,000 for a new noncommercial hazardous waste management facility.

(e) In determining the appropriateness of an award under Subsection (a) or (c), the commission shall consider:

(1) whether the information provided is material to the commission's determination to deny the permit or to require the applicant to make significant changes in the facility's design or operation;

(2) whether the information provided is information required in the permit application but not provided by the applicant;

(3) the extent to which the person affected has caused unwarranted delays or requested unwarranted continuances;

(4) the extent to which the information presented related to an issue raised during the local review process under Section 361.063 or in comments submitted on the draft permit; and

(5) whether the information would not otherwise have been presented to the commission while the commission is considering its decision.

(f) If the applicant fails or refuses to pay the amount of costs ordered not later than the 30th day after the date of entry of the final order granting payment of costs, the commission shall order the applicant's bond or other financial assurance forfeited in the amount of the costs ordered reimbursed under Subsection (a) or (c) up to and including the full amount of the bond or other financial assurance. The commission shall forward the forfeited amount to the person affected.

(g) If no request is made for an award of costs under this section or if a person affected is determined by the commission not to be entitled to an award of costs, the commission shall release the bond or other financial assurance of the applicant subject to an appeal of the denial of costs under this section. The commission shall also release the bond or other financial assurance on presentation of proof that the costs awarded have been paid.

(h) On the request of an applicant who was required at the request of a person affected to post a bond or provide other financial assurance in excess of the amount prescribed by Section 361.082(g), the commission may order the person affected who requested the excess bond or other financial assurance to pay the additional costs of an applicant if the excess amount is found to have been unnecessary to guarantee payment of costs awarded, if any. An order issued under this section is enforceable as a debt.

SECTION 1.11. Section 361.084, Health and Safety Code, is amended to read as follows:

Sec. 361.084. COMPLIANCE SUMMARIES. (a) The board of health and the commission each by rule shall establish a procedure to prepare compliance summaries relating to the applicant's solid waste management activities under each agency's jurisdiction.

(b) The compliance summaries shall be made available to the applicant and any interested person after the lead agency has completed its technical review of the permit application and before the issuance of the public notice concerning an opportunity for a hearing on the permit application.

(c) Evidence of compliance or noncompliance by an applicant for a solid waste management facility permit with agency rules, permits, or other orders concerning solid waste management or evidence of a final determination of noncompliance with federal statutes or statutes of any state concerning solid waste management in the preceding five years may be:

(1) offered by a party at a hearing concerning the application; and

(2) admitted into evidence subject to applicable rules of evidence.

(d) The agency shall consider all evidence admitted, including compliance history, in determining whether to issue, amend, extend, or renew a permit.

SECTION 1.12. Section 361.089, Health and Safety Code, is amended to read as follows:

Sec. 361.089. PERMIT DENIAL, AMENDMENT, SUSPENSION, OR REVOCATION; NOTICE AND HEARING. (a) The department or commission may, for good cause, deny, amend, or revoke a permit it issues or has authority to issue for reasons pertaining to public health, air or water pollution, or land use, or for a violation of this chapter or other applicable laws or rules controlling the management of solid waste.

(b) Except as provided by Section 361.110, the department or commission shall notify each governmental entity listed under Section 361.067 and provide an opportunity for a hearing to the permit holder or applicant and persons affected. The department or commission may also hold a hearing on its own motion.

(c) The board of health and the commission by rule shall establish procedures for public notice and any public hearing under this section.

(d) Hearings under this section shall be conducted in accordance with the hearing rules adopted by the department or commission and the applicable provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(e) The department or commission may deny, suspend for not more than 90 days, or revoke an original or renewal permit if it is found, after notice and hearing, that:

(1) the permit holder or applicant has a record of environmental violations relating to the treatment, storage, or disposal of solid waste in the preceding five years at the permitted site;

(2) the permit holder or applicant knowingly made a false or misleading statement in connection with an original or renewal application, either in the formal application or in any other written instrument relating to the application submitted to the agency, its officers, or its employees;

(3) the permit holder or applicant is indebted to the agency for fees, payment of penalties, or taxes imposed by this code or by a rule of the agency; or

(4) the permit holder or applicant is insolvent or otherwise unable to ensure that the management of the hazardous waste management facility conforms or will conform to this code and the rules of the agency.

(f) Before denying, suspending, or revoking a permit under this section, the department or commission must find:

(1) that the violations are significant and that the permit holder or applicant has not made a substantial attempt to correct the violations; or

(2) that the permit holder or applicant is indebted to the agency for fees, payment of penalties, or taxes imposed by this code or by a rule of the agency.

SECTION 1.13. Chapter 361.085, Health and Safety Code, is amended to read as follows:

Sec. 361.085. FINANCIAL ASSURANCE AND DISCLOSURE BY PERMIT APPLICANT. (a) Before a permit may be issued, amended, transferred, extended, or renewed for a hazardous waste management facility, the commission shall require as a part of each application information it deems necessary to demonstrate that an applicant has sufficient financial resources to operate the facility in a safe manner and in compliance with the permit and all applicable rules, including how an applicant intends to obtain financing for construction of the facility, and to close the facility in accordance with applicable rules. That information may include balance sheets, financial statements, and disclosure of relevant information regarding investors and stockholders, or information required by Title 40, Code of Federal Regulations, Part 264, Subpart H. If the information would be considered confidential under applicable law, the commission shall protect the information accordingly. During hearings on contested applications, the

commission may allow disclosure of confidential information only under an appropriate protective order.

(b) The commission may order a party in a contested case permit hearing to provide:

(1) the identity of any known competitor of the applicant that has provided funding to the party for its participation in the hearing; and

(2) the amount of that funding.

(c) Before a permit may be issued, amended, extended, or renewed for a solid waste facility to store, process, or dispose of hazardous waste, the commission shall determine the type or types of financial assurance that may be given by the applicant to comply with rules adopted by the commission requiring financial assurance.

(d) [(b)] Before hazardous waste may be received for storage, processing, or disposal at a solid waste facility for which a permit is issued, amended, extended, or renewed, the commission shall require the permit holder to execute the required financial assurance conditioned on the permit holder's satisfactorily operating and closing the solid waste facility.

(e) [(c)] An agency may condition issuance, amendment, extension, or renewal of a permit for a solid waste facility, other than a solid waste facility for disposal of hazardous waste, on the permit holder's executing a bond or giving other financial assurance conditioned on the permit holder's satisfactorily operating and closing the solid waste facility.

(f) [(d)] The agency to which the application is submitted shall require an assurance of financial responsibility as may be necessary or desirable consistent with the degree and duration of risks associated with the processing, storage, or disposal of specified solid waste.

(g) [(e)] Financial requirements established by the agency must at a minimum be consistent with the federal requirements established under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

(h) [(f)] The department and the commission may each:

(1) receive funds as the beneficiary of a financial assurance arrangement established under this section for the proper closure of a solid waste management facility; and

(2) spend the funds from the financial assurance arrangement to close the facility.

(i) [(g)] If liability insurance is required of an applicant, the applicant may not use a claims made policy as security unless the applicant places in escrow, as provided by the department or commission, an amount sufficient to pay an additional year of premiums for renewal of the policy by the state on notice of termination of coverage.

(j) [(h)] In addition to other forms of financial assurance authorized by rules of the board of health or commission, the agency may authorize the applicant to use a letter of credit if the issuing institution or another institution that guarantees payment under the letter is:

(1) a bank chartered by the state or the federal government; and

(2) federally insured and its financial practices are regulated by the state or the federal government.

SECTION 1.14. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.0871 to read as follows:

Sec. 361.0871. EVALUATION OF WASTE STREAM; LAND USE AND NEED. (a) Before a permit may be issued for a new hazardous waste management facility or amended to provide for capacity expansion, the applicant shall identify the nature of any known specific and potential sources, types, and volumes of waste to be stored, processed, or disposed of by the facility and shall identify any other related information the commission may require.

(b) In evaluating a permit for a new hazardous waste management facility, the commission shall assess the impact of the proposed facility on local land use in the area, including any relevant land use plans in existence before publication of the notice of intent to file a solid waste permit application or, if no notice of intent is filed, at the time the permit application is filed. In determining whether a new hazardous waste management facility is compatible with local land use, the commission shall consider, at a minimum, the location of industrial and other waste-generating facilities in the area, the amounts of hazardous waste generated by those facilities, and the risks associated with the transportation of hazardous waste to the facility. If the commission determines that a proposed application is not compatible with local land use, it may deny the permit. The commission shall adopt rules to implement this subsection.

(c) In accordance with Section 361.0232, in evaluating an application for a new commercial hazardous waste management facility, the commission shall determine the need for the specific technology proposed in the facility to manage new or increased volumes of waste generated in the state. The commission rules adopted under Section 361.0232 shall identify the types of technology for which a commercial waste management need exists and shall provide for priority consideration in permit processing for those applications that address the highest priority need as identified by the commission.

SECTION 1.15. Section 361.088, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d) In addition to providing an opportunity for a hearing held under this section, the department or the commission shall hold a public meeting and give notice as provided by Section 361.0791.

SECTION 1.16. Section 361.098, Health and Safety Code, is amended to read as follows:

Sec. 361.098. PROHIBITION ON PERMIT FOR HAZARDOUS WASTE LANDFILL IN 100-YEAR FLOODPLAIN. (a) Except as provided by Subsections (b) and (c), the [The] commission by rule shall prohibit the issuance of a permit for a new hazardous waste landfill or an areal expansion of such a landfill if the landfill is to be located in the 100-year floodplain existing before site development, unless the landfill is to be located in an area with a flood depth of less than three feet.

(b) The commission by rule may allow an areal expansion of a landfill in a 100-year floodplain if it can be demonstrated to the satisfaction of the commission that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event.

(c) The commission by rule shall prohibit the issuance of a permit for a new commercial hazardous waste land disposal unit if the unit is to be located in a 100-year floodplain, unless the applicant can demonstrate to the satisfaction of the commission that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event.

(d) The commission by rule shall require an applicant to provide sufficient information to assure that a proposed hazardous waste landfill, areal expansion of such landfill, or new commercial hazardous waste land disposal unit is not subject to inundation of a 100-year flood event. An applicant or any other party may not rely solely on floodplain maps prepared by the Federal Emergency Management Agency or a successor agency to determine whether a hazardous waste landfill, areal expansion of such landfill, or commercial hazardous waste land disposal unit is subject to such an inundation.

SECTION 1.17. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.1011 to read as follows:

Sec. 361.1011. PROHIBITION ON PERMIT FOR FACILITY AFFECTED BY FAULT. If a fault exists within two and one-half miles from the proposed or

existing wellbore of a Class I injection well or the area within the cone of influence, whichever is greater, or if a fault exists within 3,000 feet of a proposed hazardous waste management facility other than a Class I injection well or of a capacity expansion of an existing hazardous waste management facility, the burden is on the applicant, unless previously demonstrated to the commission or to the U.S. Environmental Protection Agency, to show:

(1) in the case of Class I injection wells, that the fault is not sufficiently transmissive or vertically extensive to allow migration of hazardous constituents out of the injection zone; or

(2) in the case of a proposed hazardous waste management facility other than a Class I injection well or for a capacity expansion of an existing hazardous waste management facility, that:

(A) the fault has not had displacement within Holocene time, or if faults have had displacement within Holocene time, that no such faults pass within 200 feet of the portion of the surface facility where treatment, storage, or disposal of hazardous wastes will be conducted; and

(B) the fault will not result in structural instability of the surface facility or provide for groundwater movement to the extent that there is endangerment to human health or the environment.

SECTION 1.18. Section 361.102, Health and Safety Code, is amended to read as follows:

Sec. 361.102. PROHIBITION ON PERMIT FOR HAZARDOUS WASTE MANAGEMENT FACILITIES WITHIN A CERTAIN DISTANCE ~~[FACILITY WITHIN 1,000 FEET]~~ OF RESIDENCE, CHURCH, SCHOOL, DAY CARE CENTER, ~~[OR]~~ PARK, OR PUBLIC DRINKING WATER SUPPLY. (a) Except as provided by Subsections (b) and (c), the ~~[The]~~ commission and the Texas Air Control Board by rule shall prohibit the issuance of a permit for a new hazardous waste landfill or land treatment facility or the areal expansion of such a facility if the boundary of the landfill or land treatment facility is to be located within 1,000 feet of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park ~~[that is in use:~~

~~[(1) when the notice of intent to file a permit application is filed with the commission; or~~

~~[(2) if no notice of intent is filed, when the permit application is filed with the commission].~~

(b) The commission and the Texas Air Control Board by rule shall prohibit the issuance of a permit for a new commercial hazardous waste management facility or the subsequent areal expansion of such a facility or unit of that facility if the boundary of the unit is to be located within one-half of a mile (2,640 feet) of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park.

(c) For a subsequent areal expansion of a new commercial hazardous waste management facility that was required to comply with Subsection (b), the one-half mile restriction imposed by that subsection on that expansion is the distance established at the time the initial permit for the new facility was issued.

(d) The commission and the Texas Air Control Board by rule shall prohibit the issuance of a permit for a new commercial hazardous waste management facility that is proposed to be located at a distance greater than one-half mile (2,640 feet) from an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated park, unless the applicant demonstrates that the facility will be operated so as to safeguard public health and welfare and protect physical property and the environment, at any distance beyond the facility's property boundaries, consistent with the purposes of this chapter.

(e) The measurement of distances required by Subsections (a), (b), (c), and (d) shall be taken toward an established residence, church, school, day care center,

surface water body used for a public drinking water supply, or dedicated park that is in use when the notice of intent to file a permit application is filed with the commission or, if no notice of intent is filed, when the permit application is filed with the commission. The restrictions imposed by Subsections (a), (b), (c), and (d) do not apply to a residence, church, school, day care center, surface water body used for a public drinking water supply, a dedicated park located within the boundaries of a commercial hazardous waste management facility, or property owned by the permit applicant.

(f) The measurement of distances required by Subsections (a), (b), (c), and (d) shall be taken from a perimeter around the proposed hazardous waste management unit. The perimeter shall be not more than 75 feet from the edge of the proposed hazardous waste management unit.

SECTION 1.19. Chapter 361.109, Health and Safety Code, is amended to read as follows:

Sec. 361.109. GRANT OF PERMIT FOR HAZARDOUS WASTE MANAGEMENT FACILITY. (a) The commission may grant an application for a permit in whole or in part for a hazardous waste management facility if it finds that:

(1) the applicant has provided for the proper operation of the proposed hazardous waste management facility;

(2) the applicant for a proposed hazardous waste management facility ~~[not located in an area of industrial land use]~~ has made a reasonable effort to ensure that the burden, if any, imposed by the proposed hazardous waste management facility on local law enforcement, emergency medical or fire-fighting personnel, or public roadways, will be ~~[reasonably]~~ minimized or mitigated; and

(3) the applicant, other than an applicant who is not an owner of the facility, owns or has made a good faith claim to, or has an option to acquire, or the authority to acquire by eminent domain, the property or portion of the property on which the hazardous waste management facility will be constructed.

(b) If the commission determines that a burden on public roadways will be imposed by a new commercial hazardous waste management facility, the commission shall require the applicant to pay the cost of the improvements necessary to minimize or mitigate the burden. The applicant shall bear the costs associated with any required roadway improvements. The failure of a county or municipality to accept the funds and make the improvements shall not be the basis for denial or suspension of a permit.

(c) The commission may not process an application for a permit for a new commercial hazardous waste management facility unless the applicant:

(1) has provided sufficient evidence that emergency response capabilities are available or will be available before the facility first receives waste in the area in which the facility is located or proposed to be located to manage a reasonable worst-case emergency condition associated with the operation of the facility; or

(2) has secured bonding of sufficient financial assurance to fund the emergency response personnel and equipment determined to be necessary by the commission to manage a reasonable worst-case emergency condition associated with the facility.

(d) If the applicant intends to use emergency response facilities that are not provided by the county or municipality in which the facility is located to satisfy the requirements of Subsection (c), the applicant must provide its own facilities or contract for emergency response facilities with an adjoining county, municipality, mutual aid association, or other appropriate entity. If financial assurance is required, the financial assurance must be for the benefit of the county government or municipal government in the county in which the facility is located or proposed

to be located, or both, and must provide payment of the amount of the bond or other instrument to the governmental body or governmental bodies before the facility first receives waste, with a limitation that the money can only be spent for emergency response personnel and equipment. The commission shall adopt rules to ensure that the county or municipal government or other entity has sufficient emergency response capabilities before the facility first receives waste.

(e) A permit for a new commercial hazardous waste management facility may not be granted unless the applicant provides a summary of its experience in hazardous waste management and in the particular hazardous waste management technology proposed for the application location. Any applicant without experience in the particular hazardous waste management technology shall conspicuously state that lack of experience in the application or a permit may not be granted pursuant to the application. A permit may not be denied solely on the basis of lack of experience of the applicant.

SECTION 1.20. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.113 to read as follows:

Sec. 361.113. PERMIT CONDITIONS FOR THE OPERATION OF HAZARDOUS WASTE MANAGEMENT FACILITIES. (a) The commission by rule shall establish requirements for commercial hazardous waste management facilities that will provide the opportunity for periodic monitoring of the operation of those facilities in order to assure that the facilities are in compliance with the terms of their respective permits.

(b) In proposing and adopting rules to implement this section, the commission shall consider, at a minimum, a requirement that the facility owner or operator fund an independent inspector for the facility, a requirement for an independent annual environmental audit of the facility, a procedure for considering comments from affected parties on the selection of the independent inspector, a requirement that operational personnel at the permitted facility be certified by the state as competent to operate the size and type of hazardous waste management facility for which the permit has been issued, and a requirement that the facility provide for fence line and ambient air quality monitoring.

(c) A requirement that is established by commission rule to implement this section shall be incorporated as appropriate into the conditions of a permit for a new hazardous waste management facility when the permit is issued and shall be incorporated into the conditions of a permit for an existing hazardous waste management facility when the permit is renewed.

SECTION 1.21. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.114 to read as follows:

Sec. 361.114. GRANT OF PERMIT FOR DISPOSAL OF HAZARDOUS WASTE INTO SALT DOMES. The commission may not issue a permit for a hazardous waste injection well in a solution-mined salt-dome cavern unless the United States Environmental Protection Agency and the commission determine that sufficient rules are in place to regulate and permit that activity. Before issuing a permit for a hazardous waste injection well in a solution-mined salt-dome cavern, the commission by order must find that there is a public necessity for the hazardous waste injection well.

SECTION 1.22. Section 361.401(3), Health and Safety Code, is amended to read as follows:

(3) "Petroleum" means crude oil or any fraction of crude oil that is not otherwise listed or designated as a hazardous substance under Section 361.003[(13)(A)].

SECTION 1.23. Section 27.018(d), Water Code, is amended to read as follows:

(d) An application for an injection well to dispose of hazardous waste shall be subject to the pre-application local review process established by Section 361.063,

Health and Safety Code, and to the requirements of Section 361.0791, Health and Safety Code [4(e)(12), Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes)].

SECTION 1.24. Section 27.051, Water Code, is amended by adding Subsection (g) to read as follows:

(g) The commission may not issue a permit for a hazardous waste injection well into a solution-mined salt-dome cavern unless the United States Environmental Protection Agency and the commission determine that sufficient rules are in place to regulate and permit that activity. Before issuing a permit for a hazardous waste injection well into a solution-mined salt-dome cavern, the commission by order must find that there is a public necessity for the hazardous waste injection well.

SECTION 1.25. The Texas Water Commission and the Texas Air Control Board shall impose a moratorium on final action on any application for a permit, a permit renewal, or an amendment or other change to a permit for a commercial hazardous waste management facility until the Texas Water Commission and the Texas Air Control Board adopt rules, except rules required under Section 1.03 or 1.27 of this article, necessary to carry out the provisions of this article. The Texas Water Commission and the Texas Air Control Board shall adopt all rules necessary to implement this article, except those required under Section 1.03 or 1.27, not later than the 120th day after the effective date of this article. The Texas Water Commission and the Texas Air Control Board may routinely process a new or pending application for a commercial hazardous waste management facility that will be governed by the rules to be adopted. For purposes of this section, "commercial hazardous waste management facility" does not include a facility that only stores or recycles hazardous waste, except that a commercial hazardous waste management facility that burns waste-derived fuel is not exempt from this section. This moratorium does not apply to applications for renewals of or amendments to permits for existing facilities that do not include a request for authorization to increase disposal capacity.

SECTION 1.26. (a) This article applies to any permit application, including permit applications for facilities operating under interim status, covered by the terms of this article that is pending approval on the effective date of this article. Any application for renewal of or amendment to a permit for an existing facility that includes a request for authorization to increase capacity at the facility shall comply with the terms of this article; provided, however, that the provisions of Sections 1.17 and 1.18 of this article do not apply to an application for renewal of or amendment to a permit for an existing facility or to an existing facility burning waste-derived fuels under a Texas Water Commission or Texas Air Control Board permit on the effective date of this article.

(b) The provisions of Sections 1.05, 1.07, and 1.15 of this article, the provision of Section 1.08 of this article that amends Section 361.082(d), Health and Safety Code, and the provision of Section 1.23 of this article that would impose the requirements of Section 361.0791, Health and Safety Code, as added by this article, do not apply to any application for which a hearing has already been scheduled on the effective date of this article.

(c) The provisions of Section 1.23 of this article that would impose the requirements of Section 361.0791, Health and Safety Code, as added by this article, do not apply to applications already submitted to the permitting agency on the effective date of this article.

(d) The provisions of this article do not apply to applications that are on file on the effective date of this article and that are only for permits for the disposal of treatment residues and other nonincinerable wastes generated at the same facility or at facilities wholly owned by the applicant.

(e) The provisions of this article apply to any application to amend a nonhazardous waste facility permit to accept hazardous waste that is pending approval on the effective date of this article, and to all existing nonhazardous waste permits. If a nonhazardous waste facility has become a hazardous waste facility as a result of the federal toxicity characteristic rule effective September 25, 1990, and is required to obtain a hazardous waste permit, such a facility that qualifies for interim status is limited to those activities that qualify it for interim status until the facility obtains the hazardous waste permit. The provisions of this article and this subsection do not apply to a noncommercial facility that is required to obtain a hazardous waste permit under the federal toxicity characteristic rule.

(f) To enable the Texas Water Commission to meet the deadlines imposed by Section 361.0232, Health and Safety Code, as added by Section 1.03 of this article, and imposed by Section 1.25 of this article, rules required to be adopted under those provisions are not subject to Texas Employment Commission review.

(g) To enable the Texas Water Commission to meet the deadline imposed by Sections 361.0232, Health and Safety Code, as added by Section 1.03 of this article, a purchase by the commission of services necessary to prepare the assessment and rules required by that section is exempt from the purchasing requirements of the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).

SECTION 1.27. (a) To provide accountability and predictability in the processing of permit applications, the Texas Water Commission shall review its permit application processing procedures to determine the causes of delay, if any, in those activities. After identifying any obstacles to timely determination on permit applications, the commission shall adopt reasonable permit processing and hearing timetables for permits that are determined to be administratively complete, with specific deadlines for each major step in the processing under the control of the commission and hearing procedures. Deadlines under the control of the commission do not include time the commission waits for the receipt of information from an applicant in order to properly review the application. Those deadlines under the control of the commission shall be met unless the executive director finds that the delay is necessary and lists the reasons that the deadlines cannot be met. It is the legislature's intent that permit applicants whose applications address technologies that are most needed as determined under Section 361.0234, Health and Safety Code, as added by this article, receive an ultimate determination on an administratively complete application, favorable or unfavorable, within two years of the date the application is determined to be administratively complete, excluding time not under the control of the commission.

(b) As part of this study, the Texas Water Commission shall consider mechanisms for encouraging applicants and local communities to cooperate with each other in the siting of new hazardous waste management facilities. The commission shall, at a minimum, consider the creation of an arbitration and negotiation process to resolve nontechnical issues, a technical review process in which the applicant provides opportunities for citizens to ask questions about the permit application or the draft permit, and any necessary revisions to the local review process provided by Section 361.063, Health and Safety Code. The commission shall report its findings, recommendations, and a summary of the rules adopted under Subsection (a) of this section to the legislature before January 1, 1993.

SECTION 1.28. If necessary, the Texas Water Commission, the Texas Air Control Board, and the Texas Department of Health shall enter into memoranda of understanding to establish procedures and carry out this article.

SECTION 1.29. If the Texas Water Commission, the Texas Air Control Board, or the Texas Department of Health experiences increased costs in implementing the

application procedures required under this article, the appropriate agency shall increase application fees to cover the increased costs. Those fees shall be appropriated to the appropriate agency.

SECTION 1.30. If either S.B. No. 35 or H.B. No. 2000, Acts of the 72nd Legislature, Regular Session, 1991, finally passes and is approved by the governor, the duties, powers, and responsibilities conferred by this article on the Texas Water Commission, the Texas Department of Health, or the Texas Air Control Board are transferred to the Texas Department of Natural Resources.

ARTICLE 2

SECTION 2.01. Chapter 361, Health and Safety Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. POLLUTION PREVENTION

Sec. 361.431. DEFINITIONS. In this subchapter:

(1) "Acute hazardous waste" means hazardous waste listed by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 1901 et seq.), because the waste meets the criteria for listing hazardous waste identified in 40 C.F.R. Section 261.11(A)(2).

(2) "Board" means the Texas Air Control Board.

(3) "Conditionally exempt small-quantity generator" means a generator that does not accumulate more than 1,000 kilograms of hazardous waste at any one time on his facility and who generates less than 100 kilograms of hazardous waste in any given month.

(4) "Committee" means the waste reduction advisory committee established by Section 361.0215.

(5) "Environment" means water, air, and land and the interrelationship that exists among and between water, air, land, and all living things.

(6) "Facility" means all buildings, equipment, structures, and other stationary items located on a single site or on contiguous or adjacent sites that are owned or operated by a person who is subject to this subchapter or by a person who controls, is controlled by, or is under common control with a person subject to this subchapter.

(7) "Generator" and "generator of hazardous waste" have the meaning assigned by Section 361.131.

(8) "Large-quantity generator" means a generator that generates, through ongoing processes and operations at a facility:

(A) more than 1,000 kilograms of hazardous waste in a month; or

(B) more than one kilogram of acute hazardous waste in a month.

(9) "Media" and "medium" mean air, water, and land into which waste is emitted, released, discharged, or disposed.

(10) "Pollutant" or "contaminant" includes any element, substance, compound, disease-causing agent, or mixture that after release into the environment and on exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations in the organism or its offspring. The term does not include petroleum, crude oil, or any fraction of crude oil that is not otherwise specifically listed or designated as a hazardous substance under Sections 101(14)(A) through (F) of the environmental response

law, nor does it include natural gas, natural gas liquids, liquefied natural gas, synthetic gas of pipeline quality, or mixtures of natural gas and synthetic gas.

(11) "Source reduction" has the meaning assigned by the federal Pollution Prevention Act of 1990, Pub.L. 101-508, Section 6603, 104 Stat. 1388.

(12) "Waste minimization" means a practice that reduces the environmental or health hazards associated with hazardous wastes, pollutants, or contaminants. Examples may include reuse, recycling, neutralization, and detoxification.

Sec. 361.432. **POLICY AND GOALS FOR SOURCE REDUCTION AND WASTE MINIMIZATION.** (a) It is the policy of the state to reduce pollution at its source and to minimize the impact of pollution in order to reduce risk to public health and the environment and continue to enhance the quality of air, land, and waters of the state where feasible.

(b) Source reduction is the primary goal of the state in implementing this policy because hazardous wastes, pollutants, and contaminants that are not generated or produced posed no threat to the environment and eliminate societal management and disposal costs.

(c) To further promote this policy, hazardous wastes, pollutants, and contaminants that cannot be reduced at the source should be minimized wherever possible. Waste minimization, while secondary in preference to source reduction, is an important means for achieving more effective protection of public health and the environment while moving toward source reduction.

Sec. 361.433. **AGENCY PLANS.** (a) Consistent with state and federal regulations, to achieve the policies stated in Section 361.432, the board by rule shall, to the maximum extent that is technologically and economically feasible, develop plans to reduce the release of pollutants or contaminants into the air.

(b) Consistent with state and federal regulations, to achieve the policies stated in Section 361.432, to the maximum extent that is technologically and economically feasible, the commission shall:

(1) develop plans to reduce the release of pollutants or contaminants into water; and

(2) establish reasonable goals for the reduction of the volume of hazardous waste generated in the state, using source reduction and waste minimization.

(c) In order to effectively use resources and avoid duplication of effort, the commission and board by joint rule shall develop a common list of pollutants or contaminants and the level of releases of those pollutants or contaminants subject to source reduction and waste minimization planning.

Sec. 361.434. **APPLICATION.** (a) Except as provided by Subsection (b), this subchapter applies to the following persons:

(1) all large-quantity generators of hazardous waste;

(2) all generators other than large-quantity generators and conditionally exempt small-quantity generators; and

(3) persons subject to Section 313, Title III, Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. Section 11023) whose releases exceed the levels established under Section 361.433(c).

(b) The commission and the board through joint rulemaking shall establish one or more schedules for the application of the requirements of this subchapter to designated classes of persons described by Subsection (a). The schedule shall provide for the inclusion of all persons described by Subsection (a) on a date to be determined by the commission and board, and until that date this subchapter applies only to those persons designated by rule of the commission or board.

(c) This subchapter does not apply to activities regulated by the Railroad Commission of Texas under Section 91.101 or 141.012, Natural Resources Code.

Sec. 361.435. SOURCE REDUCTION AND WASTE MINIMIZATION PLANS. (a) Persons identified under Section 361.434(a)(1) or (a)(3) shall prepare a source reduction and waste minimization plan. Plans developed under this section shall contain a separate component addressing source reduction activities and a separate component addressing waste minimization activities. The plan shall include, at a minimum:

- (1) an initial survey that identifies:
 - (A) for each facility of persons identified under Section 361.434(a)(1), activities that generate hazardous waste; and
 - (B) for each facility of persons identified under Section 361.434(a)(3), activities that result in the release of pollutants or contaminants designated under Section 361.433(c);
- (2) based on the initial survey, a prioritized list of economically and technologically feasible source reduction and waste minimization projects;
- (3) an explanation of source reduction or waste minimization projects to be undertaken, with a discussion of technical and economic considerations, and environmental and human health risks considered in selecting each project to be undertaken;
- (4) an estimate of the type and amount of reduction anticipated;
- (5) a schedule for the implementation of each source reduction and waste minimization project;
- (6) source reduction and waste minimization goals for the entire facility, including incremental goals to aid in evaluating progress;
- (7) an explanation of employee awareness and training programs to aid in accomplishing source reduction and waste minimization goals;
- (8) certification by the owner of the facility, or, if the facility is owned by a corporation, by an officer of the corporation that owns the facility who has the authority to commit the corporation's resources to implement the plan, that the plan is complete and correct;
- (9) an executive summary of the plan; and
- (10) identification of cases in which the implementation of a source reduction or waste minimization activity designed to reduce risk to human health or the environment may result in the release of a different pollutant or contaminant or may shift the release to another medium.

(b) The source reduction and waste minimization plan may include:

- (1) a discussion of the person's previous efforts at the facility to reduce risk to human health and the environment or to reduce the generation of hazardous waste or the release of pollutants or contaminants;
- (2) a discussion of the effect changes in environmental regulations have had on the achievement of the source reduction and waste minimization goals;
- (3) the effect that events the person could not control have had on the achievement of the source reduction and waste minimization goals;
- (4) a description of projects that have reduced the generation of hazardous waste or the release of pollutants or contaminants; and
- (5) a discussion of the operational decisions made at the facility that have affected the achievement of the source reduction or waste minimization goals or other risk reduction efforts.

(c) The commission shall adopt rules for the development of simplified source reduction and waste minimization plans, as appropriate, and reports for persons identified under Section 361.434(a)(2).

(d) The commission and the board shall provide information to aid in the preparation of source reduction and waste minimization plans to be prepared by a person under this section.

(e) The commission and board shall enter into memoranda of understanding as necessary to ensure that a person may meet both agencies' requirements in a single plan.

Sec. 361.436. POLLUTION PREVENTION ANNUAL REPORT. (a) A person required to develop a source reduction and waste minimization plan for a facility under this subchapter shall submit to the commission and the board an annual report and a current executive summary according to any schedule developed under Section 361.434.

(b) The annual report shall comply with rules adopted by the commission and the board through joint rulemaking. The report shall detail the facility's progress in implementing the source reduction and waste minimization plan and include:

(1) an assessment of the progress toward the achievement of the facility source reduction goal and the facility waste minimization goal;

(2) a statement to include, for each facility of persons identified under Section 361.434(a)(1), the amount of hazardous waste generated and, for each facility of persons identified under Section 361.434(a)(3), the amount of the release of pollutants or contaminants designated under Section 361.433(c) in the year preceding the report, and a comparison of those amounts with the amounts generated or released in a base year selected by agreement of the commission and the board; and

(3) any modification to the plan.

(c) The annual report may include:

(1) a discussion of the person's previous effort at the facility to reduce hazardous waste or the release of pollutants or contaminants through source reduction or waste minimization;

(2) a discussion of the effect changes in environmental regulations have had on the achievement of the source reduction and waste minimization goals;

(3) the effect that events the person could not control have had on the achievement of the source reduction and waste minimization goals; and

(4) a discussion of the operational decisions the person has made that have affected the achievement of the source reduction and waste minimization goals.

(d) The annual report shall contain a separate component addressing source reduction activities and a separate component addressing waste minimization activities.

Sec. 361.437. ADMINISTRATIVE COMPLETENESS. (a) The commission or the board may review a source reduction and waste minimization plan or annual report to determine whether the plan or report complies with this subchapter and rules adopted under Section 361.434, 361.435, or 361.436, as appropriate.

(b) Failure to have a source reduction and waste minimization plan in accordance with Sections 361.434 and 361.435 or failure to submit a source reduction and waste minimization annual report in accordance with Section 361.436 is a violation of this chapter.

Sec. 361.438. CONFIDENTIALITY. (a) A source reduction and waste minimization plan shall be maintained at each facility owned or operated by a person who is subject to this subchapter and shall be available to commission or board personnel for inspection. The source reduction and waste minimization plan is not a public record for the purposes of Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

(b) The executive summary and the annual report are public records. On request, the person shall make available to the public a copy of the executive summary or annual report.

(c) If an owner or operator of a facility for which a source reduction and waste minimization plan has been prepared shows to the satisfaction of the commission

or board that an executive summary, annual report, or portion of a summary or report prepared under this subchapter would divulge a trade secret if made public, the commission or board shall classify as confidential the summary, report, or portion of the summary or report.

(d) To the extent that a plan, executive summary, annual report, or portion of a plan, summary, or annual report would otherwise qualify as a trade secret, an action by the commission or board or an employee of the commission or board does not affect its status as a trade secret.

(e) Information classified by the commission or board as confidential under this section is not a public record for purposes of Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and may not be used in a public hearing or disclosed to a person outside the commission or board unless a court decides that the information is necessary for the determination of an issue being decided at the public hearing.

Sec. 361.439. SOURCE REDUCTION AND WASTE MINIMIZATION ASSISTANCE. (a) The office of pollution prevention established under Section 361.0216 shall assist generators of hazardous waste and owners or operators of facilities that release pollutants or contaminants in reducing the volume, toxicity, and adverse public health and environmental effects of hazardous waste generated or pollutants or contaminants released in the state. To provide the assistance, the office may:

(1) compile, organize, and make available for distribution information on source reduction and waste minimization technologies and procedures;

(2) compile and make available for distribution to business and industry a list of consultants on source reduction and waste minimization technologies and procedures and a list of researchers at state universities who can assist in source reduction and waste minimization activities;

(3) sponsor and conduct conferences and individualized workshops on source reduction and waste minimization for specific classes of business or industry;

(4) facilitate and promote the transfer of source reduction and waste minimization technologies and procedures among businesses and industries;

(5) if appropriate, develop and distribute model source reduction and waste minimization plans for the major classes of business or industry, as identified by the office, that generate and subsequently treat, store, or dispose of hazardous waste or that release a pollutant or contaminant in the state;

(6) develop and make available for distribution recommended source reduction and waste minimization audit procedures for use by business or industry in conducting internal source reduction and waste minimization audits;

(7) provide to business and industry, as resources allow, on-site assistance in identifying potential source reduction and waste minimization techniques and practices and in conducting internal source reduction and waste minimization audits;

(8) compile and make available for distribution information on tax benefits available to business or industry for implementing source reduction and waste minimization technologies and practices;

(9) establish procedures for setting priorities among key industries and businesses for receiving assistance from the office;

(10) develop the information base and data collection programs necessary to set program priorities and to evaluate progress in source reduction and waste minimization;

(11) develop training programs and materials for state and local regulatory personnel and private business and industry regarding the nature and applicability of source reduction and waste minimization practices;

(12) produce a biennial report on source reduction and waste minimization activities, achievements, problems, and goals, including a biennial work plan;

(13) participate in existing state, federal, and industrial networks of individuals and groups involved in source reduction and waste minimization; and

(14) publicize to business and industry, and participate in and support, waste exchange programs.

(b) The commission, the department, and the board shall provide education and training to river authorities, municipalities, and public groups on source reduction and waste minimization technologies and practices.

(c) The commission and the board shall develop incentives to promote the implementation of source reduction and waste minimization, including:

(1) board and commission recommendations to the governor for awards in recognition of source reduction and waste minimization efforts;

(2) an opportunity by rules of the commission and the board for an owner or operator of a facility to be exempted from the requirements of this subchapter on meeting appropriate criteria for practical economic and technical completion of the source reduction and waste minimization plan for the facility; and

(3) expedited review of a permit amendment application if the amendment is necessary to implement a source reduction and waste minimization project, considering only the directly-affected parts of the permit.

(d) The commission and the board shall work closely with the Gulf Coast Hazardous Substance Research Center to identify areas in which the center could perform research in the development of alternative technologies or conduct related projects to promote source reduction and waste minimization.

Sec. 361.440. REPORT TO LEGISLATURE. Notwithstanding any other reporting requirement, the commission and the board shall jointly prepare a biennial report to the presiding officers of the legislature and the governor concerning the implementation of this subchapter. The report must include:

(1) the status of the technical assistance program;

(2) a description of progress toward reducing the volume of hazardous waste generated and the amount of pollutants and contaminants in the state; and

(3) an analysis of and recommendations for changes to pollution prevention programs, including consideration of additional enforcement provisions.

SECTION 2.02. Section 361.021, Health and Safety Code, is amended by adding Subsection (f) to read as follows:

(f) The council shall consult with and advise the pollution prevention council on all matters relating to pollution prevention.

SECTION 2.03. Subchapter B, Chapter 361, Health and Safety Code, is amended by adding Section 361.0211 to read as follows:

Sec. 361.0211. POLLUTION PREVENTION COUNCIL. (a) The commission, the department, the Texas Air Control Board, and the Railroad Commission of Texas shall each designate an individual to coordinate source reduction and waste minimization efforts and programs in the appointing agency and represent the agency on the pollution prevention council. The individual designated shall report to that individual's executive director or assistant or deputy director.

(b) The pollution prevention council shall coordinate the activities of its represented agencies that concern source reduction and waste minimization to ensure the consistency of and to avoid duplication or conflict in programs.

SECTION 2.04. Section 361.0215(b), Health and Safety Code, is amended to read as follows:

(b) The committee shall advise the commission, pollution prevention council, and interagency coordination council on:

(1) matters the council is required to consider under Section 361.021(d);

(2) the appropriate organization of state agencies and the financial and technical resources required to aid the state in its efforts to promote waste reduction and minimization;

(3) the development of public awareness programs to educate citizens about hazardous waste and the appropriate disposal of hazardous waste and hazardous materials that are used and collected by households;

(4) the provision of technical assistance to local governments for the development of waste management strategies designed to assist small quantity generators of hazardous waste; and

(5) other possible programs to more effectively implement the state's hierarchy of preferred waste management technologies as set forth in Section 361.023(a).

SECTION 2.05. Section 361.0216, Health and Safety Code, is amended to read as follows:

Sec. 361.0216. OFFICE OF POLLUTION PREVENTION. The office of pollution prevention is created in the executive office of the commission to direct and coordinate all source reduction and waste minimization activities of the commission ~~[WASTE MINIMIZATION AND REDUCTION GROUP. The commission shall establish a waste minimization and reduction group to assist in developing waste minimization and reduction programs and to provide incentives for the use of the programs so as to make the programs economically and technologically feasible].~~

SECTION 2.06. Subchapter D, Chapter 91, Natural Resources Code, is amended by adding Section 91.110 to read as follows:

Sec. 91.110. OIL AND GAS WASTE REDUCTION AND MINIMIZATION. To encourage the reduction and minimization of oil and gas waste, the commission shall implement a program to:

(1) provide operators with training and technical assistance on oil and gas waste reduction and minimization;

(2) assist operators in developing oil and gas waste reduction and minimization plans; and

(3) by rule establish incentives for oil and gas waste reduction and minimization.

SECTION 2.07. Not later than January 1, 1992, the Texas Water Commission and the Texas Air Control Board by rule shall adopt guidelines for source reduction and waste minimization plans required by Section 361.435, Health and Safety Code, as added by this article, and shall adopt the schedules under Section 361.434(b), Health and Safety Code, as added by this article.

SECTION 2.08. Rules adopted by the Texas Water Commission or the Texas Air Control Board shall provide that the initial source reduction and waste minimization annual report required to be submitted by an identified class of persons under Section 361.436, Health and Safety Code, as added by this article, shall be submitted not later than a date certain, which may not be earlier than 18 months from the date a schedule is adopted under Section 361.434(b), Health and Safety Code, as added by this article, that identifies the class of persons as subject to the requirements of Subchapter N, Chapter 361, Health and Safety Code, as added by this article.

SECTION 2.09. If either S.B. No. 35 or H.B. No. 2000, Acts of the 72nd Legislature, Regular Session, 1991, finally passes and is approved by the governor, the duties, powers, and responsibilities conferred by this article on the Texas Water

Commission or the Texas Air Control Board are transferred to the Texas Department of Natural Resources.

ARTICLE 3

SECTION 3.01. Chapter 20, Title 132, Revised Statutes, is amended by adding Article 9009b to read as follows:

Art. 9009b. METALS RECYCLING ACTIVITIES; TRANSACTIONS INVOLVING LEAD-ACID BATTERIES, FUEL TANKS, OR PCB-CONTAINING CAPACITORS

Sec. 1. DEFINITIONS. In this article:

(1) "Metals recycling activity" means any business that is predominantly engaged in:

(A) performing the manufacturing process by which scrap, used, or obsolete ferrous or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, by methods other than the exclusive use of hand tools, including processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form of those metals; or

(B) the use of those raw material products in the manufacture of producer or consumer goods.

(2) "Motor vehicle" has the meaning assigned by Section 2(b), Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).

(3) "PCB-containing capacitor" means a capacitor that contains polychlorinated biphenyls and is regulated under the federal Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.).

(4) "Person" means an individual, corporation, partnership, sole proprietorship, or other business entity.

Sec. 2. TRANSACTIONS INVOLVING LEAD-ACID BATTERIES, FUEL TANKS, OR PCB-CONTAINING CAPACITORS. (a) A person may not sell, convey, or otherwise transfer to a metals recycling activity a lead-acid battery, fuel tank, or PCB-containing capacitor that is included with other types of scrap, used, or obsolete metals without first obtaining from the metals recycling activity to which the lead-acid battery, fuel tank, or PCB-containing capacitor is being sold, conveyed, or transferred a written and signed acknowledgment that the scrap, used, or obsolete metals include one or more lead-acid batteries, fuel tanks, or PCB-containing capacitors.

(b) A person may not sell, convey, or otherwise transfer to a metals recycling activity any of the following that contain or enclose a lead-acid battery, fuel tank, or PCB-containing capacitor or of which a lead-acid battery, fuel tank, or PCB-containing capacitor is a part:

(1) a motor vehicle;

(2) a motor vehicle that has been junked, flattened, dismantled, or changed so that it has lost its character as a motor vehicle;

(3) an appliance; or

(4) any other item of scrap, used, or obsolete metal.

Sec. 3. EXEMPTIONS. This article does not apply to:

(1) the sale, conveyance, or transfer by or on behalf of a metals recycling activity; or

(2) the sale, conveyance, or transfer of a lead-acid battery, fuel tank, or PCB-containing capacitor that is not:

(A) included with other types of scrap, used, or obsolete metals; or

(B) contained or enclosed in, or a part of:

(i) a motor vehicle;

(ii) a motor vehicle that has been junked, flattened, dismantled, or changed so that it loses its character as a motor vehicle;
(iii) an appliance; or
(iv) any other item of scrap, used, or obsolete metal.

Sec. 4. NOTIFICATION AND POSTING. A metals recycling activity shall post in a conspicuous location a notice that is readily visible to a person selling materials to the metals recycling activity. The notice must be no smaller than 24 inches horizontally by 18 inches vertically and must contain the following language:

TEXAS LAW PROHIBITS:

1. THE SALE OF A WHOLE, FLATTENED, OR JUNKED MOTOR VEHICLE, AN APPLIANCE, OR ANY OTHER SCRAP METAL ITEM CONTAINING A LEAD-ACID BATTERY, FUEL TANK, OR PCB-CONTAINING CAPACITOR; AND

2. THE SALE OF LEAD-ACID BATTERIES, FUEL TANKS, OR PCB-CONTAINING CAPACITORS INCLUDED WITH OTHER SCRAP METALS WITHOUT OUR PRIOR WRITTEN ACKNOWLEDGMENT.

VIOLATION OF THIS LAW IS A MISDEMEANOR.

Sec. 5. CRIMINAL PENALTY. A person who violates this article is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$1,000, by confinement in the county jail for not more than 60 days, or by both fine and confinement.

ARTICLE 4

SECTION 4.01. This Act may be referred to as the Waste Reduction Policy Act of 1991.

SECTION 4.02. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Amendment - Heflin

Amend C.S.S.B. 1099 by striking Sec. 361.084(c) in SECTION 1.11 of the bill and substituting the following:

(c) Evidence of compliance or noncompliance by an applicant for a solid waste management facility permit with agency rules, permits, or other orders, and for applicants without an operating history in Texas, evidence of a final determination of noncompliance with federal statutes or statutes of any state, in the preceding five years concerning solid waste management may be:

- (1) offered by a party at a hearing concerning the application; and
- (2) admitted into evidence subject to applicable rules of evidence.

Amendment - Heflin

Amend C.S.S.B. 1099 as follows:

On page 66, after line 22, insert the following new SECTION 2.10:

SECTION 2.10. If the Texas Water Commission, the Texas Air Control Board, or the Texas Department of Health experiences increased costs in implementing the application procedures required under this article, the

appropriate agency shall increase application fees to cover the increased costs. Those fees shall be appropriated to the appropriate agency.

The amendments were read.

Senator Carriker moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.B. 1099 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Carriker, Chair; Dickson, Rosson, Harris of Tarrant, Barrientos.

COMMITTEE SUBSTITUTE SENATE BILL 1597 ON SECOND READING

Senator Glasgow moved to suspend the regular order of business to take up for consideration at this time:

C.S.S.B. 1597, Relating to workers' compensation insurance rate regulation, the powers and duties of the Texas workers' compensation insurance facility, the abolition of the Texas workers' compensation insurance facility, and the creation of the Texas Workers' Compensation Insurance Fund; creating offenses and providing penalties; authorizing bonds, providing for a maintenance tax surcharge; and making an appropriation.

The motion prevailed by the following vote: Yeas 21, Nays 8.

Yeas: Barrientos, Brooks, Brown, Carriker, Ellis, Glasgow, Green, Harris of Tarrant, Harris of Dallas, Johnson, Krier, Lucio, Moncrief, Montford, Ratliff, Rosson, Sims, Tejeda, Turner, Whitmire, Zaffirini.

Nays: Armbrister, Haley, Henderson, Leedom, Lyon, Parker, Sibley, Truan.

Absent: Bivins, Dickson.

The bill was read second time.

Senator Parker offered the following amendment to the bill:

Amend **C.S.S.B. 1597** as follows:

Amend **SECTION 6** adding a new Article 5.65C, on page 17, by adding a new subsection (g) to read as follows:

“(g) If an insurer writes alternative coverage to workers' compensation insurance coverage as authorized under Section 3.42 of the Texas Workers' Compensation Act (Article 8308-3.42, Vernon's Texas Civil Statutes), such alternative coverage must provide for medical care that is equal to or greater than the medical benefits provided under the Texas Workers' Compensation Act (Article 8308-1.01 et seq., Vernon's Texas Civil Statutes).”

The amendment was read and was adopted by a viva voce vote.

RECORD OF VOTE

Senator Krier asked to be recorded as voting “Nay” on the adoption of the amendment.

On motion of Senator Glasgow and by unanimous consent, further consideration of C.S.S.B. 1597 was postponed.

**CONFERENCE COMMITTEE REPORT
ON HOUSE BILL 2004**

Senator Zaffirini submitted the following Conference Committee Report:

Austin, Texas
May 24, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on H.B. 2004 have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

ZAFFIRINI
CARRIKER
BROOKS
TRUAN
MONCRIEF
On the part of the Senate

GLAZE
HARRIS
HIRSCHI
RODRIGUEZ
RABUCK
On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

(Senator Armbrister in Chair)

HOUSE BILL 1894 ON SECOND READING

On motion of Senator Carriker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1894, Relating to mandatory liability insurance for certain antique vehicles.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1894 ON THIRD READING

Senator Carriker moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **H.B. 1894** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 2855 ON SECOND READING

On motion of Senator Carriker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2855, Relating to the authority of the Caprock Hospital District to borrow money.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 2855 ON THIRD READING

Senator Carriker moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **H.B. 2855** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

(President in Chair)

HOUSE BILL 413 ON SECOND READING

On motion of Senator Ratliff and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 413, Relating to the forensic analysis of evidence in criminal matters.

The bill was read second time.

Senator Ratliff offered the following amendment to the bill:

Amend **H.B. 413** on page 1, line 32 by striking SECTION 1, Subsection (c), and substituting the following language:

“(c) A law enforcement agency, other governmental agency, or private entity performing a forensic analysis of physical evidence may require the requesting law enforcement agency to pay a fee for such analysis.”

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Ratliff and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 413 ON THIRD READING

Senator Ratliff moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **H.B. 413** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 1373 ON SECOND READING

On motion of Senator Ratliff and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1373, Relating to the authority of a water supply or sewer service corporation.

The bill was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2786 ON SECOND READING**

On motion of Senator Ratliff and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2786, Relating to the creation of the County Court at Law of Hopkins County.

The bill was read second time and was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2786 ON THIRD READING**

Senator Ratliff moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **C.S.H.B. 2786** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 434 ON SECOND READING

On motion of Senator Turner and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 434, Relating to the suspension or denial of the driver's license or permit of a child found to have engaged in delinquent conduct or conduct indicating a need for supervision.

The bill was read second time.

Senator Turner offered the following amendment to the bill:

Amend **H.B. 434** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Subsection (a), Section 4A, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), as added by Section 1, Chapter 303, Acts of the 68th Legislature, Regular Session, 1983, is amended to read as follows:

(a) The Department may not issue a license or permit to a person convicted of an offense under Article 67011-1, Revised Statutes, or ~~[Subdivision (2), Subsection (a);]~~ Section 19.05(a)(2) ~~[19.05]~~, Penal Code, or an offense to which Section 24(a-1) of this Act applies unless the period of suspension that would have applied had the person had a license, permit, or privilege at the time of the conviction has expired. The Department may not issue a license or permit to a

person if the Department has been ordered by a juvenile court under Section 54.042, Family Code, to deny the person a license or permit, unless the period of time specified in the order has expired.

SECTION 2. Subsection (d), Section 23A, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) If the petitioner's license was suspended following a conviction for an offense under Article 67011-1 ~~[or 67011-2]~~, Revised Statutes, ~~[or]~~ an offense under ~~[Subdivision (2), Subsection (a)]~~ Section 19.05(a)(2) ~~[19.05]~~ or Section 19.07, Penal Code, ~~or an offense to which Section 24(a-1) of this Act applies [as amended]~~, the clerk of the court shall send by certified mail a copy of the verified petition and notice of the hearing to the attorney representing the state.

SECTION 3. Section 24, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), is amended by amending Subsections (a), (b), (d), (e), and (f) and adding Subsections (a-1), (j), and (k) to read as follows:

(a) Except as provided by Subsection (g) of this Section, the license of any person shall be automatically suspended upon final conviction of ~~[any of the following offenses]~~:

(1) ~~an [1. An]~~ offense under Section 19.07, Penal Code, committed as a result of the person's criminally negligent operation of a motor vehicle;

(2) ~~[, or]~~ an offense under ~~[Subdivision (2), Subsection (a)]~~ Section 19.05(a)(2) ~~[19.05]~~, Penal Code;

(3) ~~an [2. An]~~ offense under Article 67011-1, Revised Statutes;

(4) ~~an [3. Any]~~ offense punishable as a felony under the motor vehicle laws of this State;

(5) ~~an offense under Section 38, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes) [4. A conviction of a driver of a motor vehicle involved in an accident or collision, upon a charge of failure to stop, render aid, and disclose his identity at the scene of said accident or collision];~~
or

(6) ~~an [5. An]~~ offense under Section 32 or 32A of this Act.

(a-1) The license of any person who was younger than 21 years of age at the time of the offense, other than a misdemeanor punishable by fine only, shall be automatically suspended on conviction of:

(1) an offense under Article 67011-1, Revised Statutes;

(2) an offense under the Alcoholic Beverage Code involving the manufacture, delivery, possession, transportation, or use of an alcoholic beverage;

(3) an offense under Chapter 481, Health and Safety Code (Texas Controlled Substances Act), involving the manufacture, delivery, possession, transportation, or use of a controlled substance;

(4) an offense under Chapter 483, Health and Safety Code, involving the manufacture, delivery, possession, transportation, or use of a dangerous drug;

(5) an offense under Chapter 484, Health and Safety Code, involving the manufacture, delivery, possession, transportation, or use of a volatile chemical.

(b) Except as provided by Subsections (d), (e), (g), (h), ~~[and] (i), and (j)~~ of this Section, the suspension above provided shall in the first instance be for a period of twelve (12) months. In event any license shall be suspended under the provision of this Section for a subsequent time, said subsequent suspension shall be for a period of eighteen (18) months, except as provided by Subsections (d), (e), (g), (h), ~~[and] (i), and (j)~~ of this Section.

(d) Except as provided by Subsections (g), ~~[and] (h), and (j)~~ of this Section, if a person is convicted of an offense under Article 67011-1, Revised Statutes, ~~[as amended]~~, the suspension of the person's license shall be for a period determined by the court according to the following schedule:

(1) not less than ninety (90) or more than three hundred sixty-five (365) days, if the person is punished under Subsection (c) of that article, whether or not the punishment is increased under Subsection (f) of that article; or

(2) not less than one hundred eighty (180) days or more than two (2) years, if the person is punished under Subsection (d) or (e) of that article, whether or not the punishment is increased under Subsection (f) of that article.

(e) Except as provided by Subsection (j) of this section, if [H] a person is convicted of an offense under [Subdivision (2), Subsection (a);] Section 19.05(a)(2) [19.05], Penal Code, the suspension of the person's license shall be for a period determined by the court of not less than one hundred eighty (180) days or more than two (2) years.

(f) Except as otherwise provided by this subsection, the court shall credit toward the period of suspension of a person's license required by this article a period of suspension imposed on the person for refusal to give a specimen under Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 [1965] (Article 67011-5, Vernon's Texas Civil Statutes), if the refusal followed an arrest for the same offense for which the court is suspending the person's license under this article. The court may not extend the credit to a person that has been previously convicted of an offense under Article 67011-1, Revised Statutes, or [Subdivision (2), Subsection (a);] Section 19.05(a)(2) [19.05], Penal Code, or to a person whose period of suspension is governed by Subsection (j) of this section.

(j) The Department shall suspend the license of a person who is younger than 21 years of age and is convicted of an offense under Section 19.05(a)(2), Penal Code, or Article 67011-1, Revised Statutes, regardless of whether the person is required to attend an educational program designed to rehabilitate persons who have driven while intoxicated under Section 13(h), Article 42.12, Code of Criminal Procedure, for one year. If a person required to attend an educational program designed to rehabilitate persons who have driven while intoxicated under Section 13(h), Article 42.12, Code of Criminal Procedure, does not complete the program before the end of the person's suspension, the Department shall continue the suspension until the Department receives proof that the person has successfully completed the program. A person who completes the educational program required under this subsection may submit proof of the completion to the clerk of the convicting court who shall send it to the Department in the manner provided by Section 13(h), Article 42.12, Code of Criminal Procedure.

(k) A person whose license is suspended under Subsection (a-1) of this section is not ineligible to receive an occupational license under Section 23A of this Act because of the suspension. In addition, suspension under Subsection (a-1) of this section is not a suspension for physical or mental disability or impairment for purposes of eligibility to apply for an occupational license under Section 23A of this Act.

SECTION 4. Subdivision (1), Subsection (g), Section 24, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) Except as provided by Subdivision (2) of this subsection and Subsection (j) of this section, the Department may not, during the period of probation, suspend the driver's license, permit, or nonresident operating privilege of a person if the person is required under Section 13(h) [6d], Article 42.12, Code of Criminal Procedure, to attend and successfully complete an educational program designed to rehabilitate persons who have driven while intoxicated. The Department also may not suspend the driver's license, permit, or nonresident operating privilege of a person for whom the jury has recommended, under Section 4 [3a(b)], Article 42.12, Code of Criminal Procedure, no suspension.

SECTION 5. Subsection (c), Section 25, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) For the purpose of this Act, the term "conviction" shall mean a final conviction. A conviction of an offense described in Section 24(a) or (a-1) of this Act is a final conviction whether or not any portion of the sentence for the conviction was suspended or probated. Also, for the purpose of this Act, a final judgment of forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction.

SECTION 6. Section 26, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 26. SURRENDER AND RETURN OF LICENSE. (a) Except as limited by Subsection (b) of this section, the [The] Department, upon suspending or revoking a license, shall require that such license shall be surrendered to and be retained by the Department except that at the end of the period of suspension of such license, the license so surrendered shall be returned to the licensee.

(b) The Department may not return a license or reinstate a privilege to operate a motor vehicle suspended under Section 24(a-1) of this Act, unless the person whose license or privilege was suspended makes application to the Department for reinstatement of the person's license or privilege and, in addition to any other fee required by law, pays to the Department a reinstatement fee of Five Dollars (\$5.00).

(c) Fees paid under this section shall be deposited in the state treasury to the credit of the Operator's and Chauffeur's License Fund and shall be appropriated only to the Department to administer the provisions of this Act.

SECTION 7. Section 54.042, Family Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) A juvenile court, in a disposition hearing under Section 54.04 of this code, may order the Department of Public Safety to suspend a child's driver's license or permit or, if the child does not have a license or permit, to deny the issuance of a license or permit to the child for a period not to exceed six months if the court finds that the child has engaged in conduct in need of supervision or delinquent conduct other than the conduct described by Subsection (a) of this section.

(e) A juvenile court that places a child on probation under Section 54.04 of this code may require as a reasonable condition of the probation that if the child violates the probation, the court may order the Department of Public Safety to suspend the child's driver's license or permit or, if the child does not have a license or permit, to deny the issuance of a license or permit to the child for a period not to exceed six months. The court may make this order if a child that is on probation under this condition violates the probation. A suspension under this subsection is cumulative of any other suspension under this section.

SECTION 8. Subsection (d), Section 54.04, Family Code, is amended to read as follows:

(d) If the court or jury makes the finding specified in Subsection (c) of this section:

(1) the court or jury may, in addition to any order required or authorized under Section 54.041 or 54.042 of this code, place the child on probation on such reasonable and lawful terms as the court may determine for a period not to exceed one year, subject to extensions not to exceed one year each:

(A) in his own home or in the custody of a relative or other fit person;

(B) in a suitable foster home; or

(C) in a suitable public or private institution or agency, except the Texas Youth Commission;

(2) if the court or jury found at the conclusion of the adjudication hearing that the child engaged in delinquent conduct and if the petition was not approved by the grand jury under Section 53.045 of this code, the court may commit the child to the Texas Youth Commission without a determinate sentence; or

(3) if the court or jury found at the conclusion of the adjudication hearing that the child engaged in delinquent conduct that included a violation of a penal law listed in Section 53.045(a) of this code and if the petition was approved by the grand jury under Section 53.045 of this code, the court or jury may sentence the child to commitment in the Texas Youth Commission with a transfer to the Texas Department of Corrections for any term of years not to exceed 30 years.

SECTION 9. Subsection (g), Section 13, Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(g) A [If the] jury that recommends probation for a person convicted of an offense under Article 6701I-1, Revised Statutes, and punished under Subsection (c) of that article, [it] may recommend that any driver's [operator's, commercial operator's, or chauffeur's] license issued to the defendant under Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), not be suspended only if the defendant was 21 years of age or older at the time of the commission of the offense.

SECTION 10. This Act takes effect September 1, 1991.

SECTION 11. (a) The change in law made by this Act applies only to conduct engaged in or to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) Conduct engaged in or an offense committed before the effective date of this Act is covered by the law in effect when the conduct occurred or the offense was committed, and the former law is continued in effect for that purpose.

SECTION 12. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Turner and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 434 ON THIRD READING

Senator Turner moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that H.B. 434 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 1227 ON SECOND READING

On motion of Senator Turner and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1227, Relating to the authority of counties to improve certain subdivision roads and assess the cost of repairs against subdivision residents.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 1227 ON THIRD READING

Senator Turner moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that H.B. 1227 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

HOUSE BILL 2803 ON SECOND READING

On motion of Senator Turner and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2803, Relating to the Montgomery County Hospital District.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 2803 ON THIRD READING

Senator Turner moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that H.B. 2803 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 2818 ON SECOND READING

On motion of Senator Turner and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 2818, Relating to the creation, administration, powers, duties, operation, and financing of The Woodlands Road Utility District No. 1, of Montgomery County, Texas; granting the authority to issue bonds.

The bill was read second time and was passed to third reading by a viva voce vote.

HOUSE BILL 2818 ON THIRD READING

Senator Turner moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that H.B. 2818 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE
HOUSE CONCURRENT RESOLUTION 197 ON SECOND READING**

On motion of Senator Turner and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading:

C.S.H.C.R. 197, Expressing the support for the creation of the Center for the Study of Western Hemispheric Trade in the State of Texas and urging the passage of **S.B. 423**.

The resolution was read second time and was adopted by a viva voce vote.

HOUSE BILL 150 ON SECOND READING

On motion of Senator Glasgow and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 150, Relating to apportionment of the state into representative districts.

The bill was read second time and was passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Harris of Dallas, Harris of Tarrant, Krier, Ratliff, Sibley and Leedom asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 150 ON THIRD READING

Senator Glasgow moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **H.B. 150** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 24, Nays 6.

Yeas: Armbrister, Barrientos, Brooks, Brown, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Henderson, Johnson, Lucio, Lyon, Moncrief, Montford, Parker, Rosson, Sims, Tejeda, Truan, Turner, Whitmire, Zaffirini.

Nays: Harris of Tarrant, Harris of Dallas, Krier, Leedom, Ratliff, Sibley.

Absent: Bivins.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTES

Senators Harris of Dallas, Harris of Tarrant, Krier, Ratliff, Sibley and Leedom asked to be recorded as voting "Nay" on the final passage of the bill.

(Senator Haley in Chair)

MESSAGE FROM THE HOUSE

House Chamber
May 24, 1991

HONORABLE BOB BULLOCK
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.C.R. 47, Endorsing the Bill of Responsibilities of the Freedoms Foundation at Valley Forge.

S.C.R. 93, Requesting the Texas Medical Disclosure Panel to adopt disclosures of risks and hazards for breast implantation procedures.

H.C.R. 177, Urging the United States Congress to amend Section 3104(a), Title 38, of the United States Code to permit full concurrent receipt of military longevity retired pay and service-connected disability compensation benefits.

H.C.R. 212, Requesting President Salinas de Gortari to return or loan to the State of Texas the Alamo Flag as a gesture of goodwill.

H.C.R. 237, Encouraging the Texas Department of Human Services to develop a system of appropriate rate setting methodology which has as its focus the goal of quality care in all necessary and desirable settings.

Respectfully submitted,

BETTY MURRAY, Chief Clerk
House of Representatives

FLOOR PRIVILEGES GRANTED

On motion of Senator Parker and by unanimous consent, James Fields, Legal Counsel for the Subcommittee on Insurance, was granted Floor Privileges during consideration of **C.S.H.B. 2**.

COMMITTEE SUBSTITUTE HOUSE BILL 2 ON SECOND READING

On motion of Senator Parker and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2, Relating to the regulation of the insurance industry, the punishment for certain criminal offenses relating to the business of insurance, maintaining motor vehicle financial responsibility, and creating certain offenses.

The bill was read second time.

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 2**, Section 1.08, page 25, Article 1.35A, Insurance Code, subparagraph (A), lines 19-20, to read as follows:

(A) matters involving rates, rules and forms affecting property and casualty insurance;

and subparagraph (C), lines 23-24, to read as follows:

(C) matters involving rules affecting life, health, and accident insurance; and

Amend **C.S.H.B. 2**, Section 1.08, page 25, Article 1.35A, Insurance Code, by inserting the following between lines 24 and 25 redesignating the following subparts:

(D) matters involving rates, rules, and forms affecting credit life, and credit accident health insurance;

(E) matters involving rates, rules and forms affecting all other lines of insurance for which the State Board of Insurance promulgates, sets, or approves rates, rules, and/or forms;

and relettering as appropriate.

The amendment was read and was adopted by a viva voce vote.

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 2

Amend C.S.H.B. 2, Section 1.02, Article 1.09, subsection (b), page 11, lines 24-25 and page 12, lines 1-8, to read as follows:

"(b) The Commissioner of Insurance shall be a resident citizen of Texas, for at least one (1) year immediately prior to his/her appointment and shall be a competent and experienced administrator who shall be well informed and qualified in the field of insurance and insurance regulation. He/she shall have had at least ten (10) years of administrative or professional experience, and shall have had training and experience in the field of insurance or insurance regulation. No former or present member of the Board [~~of Insurance Commissioners~~] shall be appointed Commissioner of Insurance."

The amendment was read and was adopted by a viva voce vote.

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 3

Amend C.S.H.B. 2, Section 11.23, Article 1.35D, page 364, by deleting subparagraph (2) of subsection (b) and renumbering the remaining subparagraphs.

The amendment was read and was adopted by a viva voce vote.

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 4

Amend C.S.H.B. 2, Section 8.02, Article 21.49-1, page 216 by deleting lines 6 (after the period) through line 17.

The amendment was read and was adopted by a viva voce vote.

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 5

Amend C.S.H.B. 2 as follows:

1. SECTION 2.01 Amend Article 5.101. by striking "a licensed advisory organization," line 19, page 40.

2. SECTION 2.01. Amend Article 5.101 by

(a) striking "from a licensed advisory organization", line 16, page 46.

(b) striking subsections (j) and (k) on pages 46-47 and substituting the following:

"(j) An insurer who writes insurance in any line subject to this subchapter is required to make rate filings under Subsection (d), (e), (f) or (g) of this section, using its own historical premium and loss data as well as its own data for expenses and for profit and contingency factors. The board may require an audit of the insurer's historical premium and loss data. The insurer may separately supplement its own historical premium and loss data with historical premium and loss data as necessary. The board may, by rule, establish requirements for reporting historical premium and loss data under this subsection."

3. SECTION 2.06. Amend Article 5.05 by

(a) striking "(a)" on line 3, page 49.

(b) striking subsections (b) and (c) on pages 49-50.

(c) relettering subsections (d) through (f) on page 50.

4. SECTION 2.39. Amend Article 5.73 by

(a) striking Sec. 3 on lines 6-7, page 101.

(b) renumbering "Sec. 4" to "Sec. 3" and "Sec. 5" to "Sec. 4" on line 25, page 102.

(c) inserting the following Sec. 5 on line 25, page 103:

"Sec. 5. The authority granted under this article expires September 1, 1993."

The amendment was read and was adopted by a viva voce vote.

(President in Chair)

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 6

Amend C.S.H.B. 2 as follows:

In SECTION 2.39, on page 103, strike subsection (d), lines 15 through 17.

In SECTION 9.05, strike SECTION 9.05, on page 247, line 2 through page 248, line 24.

In SECTION 9.08, on page 253, line 21, strike the word "four" and substitute "three"; on line 24, strike the word "four" and substitute "two". On page 254, line 3, strike the word "two" and substitute "one".

In SECTION 9.10, on page 255, line 24, strike the word "four" and substitute "three".

In SECTION 9.12A, on page 258, line 17, strike the word "three" and insert the word "five". On line 20, strike the word "two" and insert "one". On line 22, strike the word "two" and insert "one."

In SECTION 11.42, subsection (g), on page 388, line 13, strike "nine members appointed by the Board as follows:" and insert "nine members as follows:"

In SECTION 11.42, subsection (g), on page 388, lines 16-21, strike subparagraph (1) in its entirety and substitute the following:

(1) five representatives of different insurers who are members of the Association who shall be elected by members as provided in the plan of operation;

In SECTION 11.42, subsection (g), on page 389, lines 6-9, strike "A member who has served one full term is not eligible to succeed himself." and substitute therefor "If an insurer member has been elected and served two full terms, such insurer shall provide for a reasonable rotation of persons designated by it to serve on the board."

In SECTION 11.42, subsection (i), on page 389, lines 10-17, strike "Except as otherwise provided by this subsection, a person appointed to the board of directors of the Association as provided by Subsection (g) (1) of this section may not be immediately succeeded by a representative of the same insurer. A person appointed as provided by Subsection (g) (1) of this section who is a representative of an insurer who provides reinsurance for the Association may be immediately succeeded by a representative of the same insurer."

The amendment was read and was adopted by a viva voce vote.

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 7

Amend C.S.H.B. 2 as follows:

On page 115, line 17, strike "less" and substitute "different".

The amendment was read and was adopted by a viva voce vote.

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 8

Amend C.S.H.B. 2 as follows:

1. On page 38, strike lines 1-4 and substitute the following:

"by Subchapters A through L of this chapter, except general liability insurance, commercial property insurance, workers' compensation insurance, professional liability insurance for physicians and health care providers as defined in Article 1.15-1 of this code, and attorney's professional liability insurance."

2. On page 103, after line 24, insert a new Section 6 to read as follows:

"Sec. 6. To the extent that this article conflicts with the provisions of Chapter 1, Acts of the 71st Legislature, Second Called Session, 1989, with respect to the setting of rates for workers' compensation insurance, the provisions of Chapter 1, Acts of the 71st Legislature, Second Called Session, 1989, shall control."

The amendment was read.

Senator Lyon offered the following amendment to Floor Amendment No. 8:

Floor Amendment No. 8a

Amend Floor Amendment No. 8 by adding the following:

(1) On page 101, line 2, between the period and "No" insert "(a)".

(2) On page 101, between lines 5 and 6, insert the following:

(b) This section does not apply to workers' compensation insurance. This subsection does not apply if H.B. 2898, Acts of the 72nd Legislature, Regular Session, 1991, becomes law.

The amendment to the amendment was read and was adopted by a viva voce vote.

Question recurring on the adoption of Floor Amendment No. 8 as amended, the amendment as amended was adopted by a viva voce vote.

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 9

Amend C.S.H.B. 2 on page 302 by striking line 16 and renumbering accordingly and on page 305 by adding the following sentence on line 21:

"This article does not apply to Chapter 20A of this Code except as provided in Section 9 of that Chapter."

The amendment was read and was adopted by a viva voce vote.

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 10

Amend C.S.H.B. 2, page 451, line 9, by deleting the word "both" therefrom.

The amendment was read and was adopted by a viva voce vote.

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 11

Amend C.S.H.B. 2, Section 11.03, page 304, by amending subsection (f) of Section 3 to read as follows:

(f) Except as otherwise provided, if an insurer delays payment of a claim following its receipt of all items, statements, and forms reasonably requested and required, as provided under Section 2 of this article, for a period exceeding the period specified in other applicable statutes or, in the absence of any other specified period, for more than 60 days, the insurer shall pay damages and other times as provided for in Section 6 of this article.

The amendment was read and was adopted by a viva voce vote.

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 12

Amend C.S.H.B. 2 in the following manner:

(1) On page 302 delete lines 11, 12 and 13, and reletter accordingly.

(2) On page 305 on line 17 after the word “to” and before the word “fidelity” insert the following: “title insurance.”

The amendment was read and was adopted by a viva voce vote.

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 13

Amend C.S.H.B. 2, Article 2 in the following manner:

(1) Amend C.S.H.B. 2, Article 2.45 on page 110 by striking lines 11 through 18, and renumbering the section accordingly.

(2) Amend C.S.H.B. 2 by adding a new Article 2.56:

Section B, Article 9.30, Insurance Code is amended by adding a new subsection:

“(5) Nothing in this article shall affect the division of premium between a title insurance company and its subsidiary title insurance agent when the title insurance company directly issues its policy or contract of title insurance pursuant to Article 9.34. For purposes of this provision, a subsidiary is a company at least 50% of the voting stock of which is owned by the title insurance company or by a wholly owned subsidiary of the title insurance company.”

The amendment was read and was adopted by a viva voce vote.

Senator Montford offered the following amendment to the bill:

Floor Amendment No. 14

Amend C.S.H.B. 2, Section 11.07, by amending subsection (1) of Section 19, Article 21.28-D Insurance Code, to read as follows:

(1) Unless a longer period of time has been required by the commissioner, a member insurer shall at its option have the right to show a certificate of contribution as an admitted asset in the form approved by the commissioner pursuant to Section 9, Paragraph (7), at percentages of the original face amount approved by the commissioner, for calendar years as follows:

100 percent for the calendar year of issuance, which shall be reduced 10 percent a year for each year thereafter for a period of 10 years;

~~[80 percent for the first calendar year after the year of issuance;
[60 percent for the second calendar year after the year of issuance;
[40 percent for the third calendar year after the year of issuance;
[20 percent for the fourth calendar year after the year of issuance].~~

The amendment was read and was adopted by a viva voce vote.

Senator Montford offered the following amendment to the bill:

Floor Amendment No. 15

Amend C.S.H.B. 2 by adding the following appropriately numbered sections to Article 11 to read as follows:

SECTION _____. Section 3B, Chapter 757, Acts of the 60th Legislature, Regular Session, 1967 (Article 21.07-3 Vernon's Texas Insurance Code) is amended to read as follows:

Sec. 3B. In addition to any other conduct or practice prohibited by law, a managing general agent may not knowingly cede, arrange, facilitate, or bind an insurer to reinsurance, except that the managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules. The managing general agent may not commit the insurer to participate in insurance or reinsurance syndicates [to a company that is unable to fulfill its obligations under the reinsurance contract].

SECTION _____. Section 3C, Chapter 757, Acts of the 60th Legislature, Regular Session, 1967 (Article 21.07-3, Vernon's Texas Insurance Code) is amended by adding a new subsection (f) to read as follows:

(f) A managing general agent shall submit to an examination of its financial condition, and its compliance with the laws of Texas affecting the conduct of its business by the commissioner, by one or more commissioned examiners, or by a certified public accountant or persons or firms qualified to perform such examinations, as the commissioner deems necessary. The expense of such examination shall be paid by the managing general agent examined in an amount the commissioner shall certify to be just and reasonable.

SECTION _____. REPEALER. Article 18.16-1, Insurance Code, is repealed.

SECTION _____. Article 1.11, Insurance Code, is amended by adding new Subsection (c) to read as follows:

(c) Included on or attached to page 1 of the annual statement shall be the statement of a qualified actuary, who is a member in good standing of the American Academy of Actuaries, entitled "Statement of Actuarial Opinion," setting forth his or her opinion relating to policy reserves and other actuarial items for life, accident and health, and annuities, or loss and loss adjustment expense reserves for property and casualty risks, as described in the NAIC annual statement instructions as appropriate for the type of risks insured.

SECTION _____. Sections 1 and 2, Article 1.32, Insurance Code, are amended to read as follows:

Article 1.32. HAZARDOUS FINANCIAL CONDITION

Section 1. (a) "Insurer" shall include but not be limited to capital stock companies, reciprocal or interinsurance exchanges, Lloyds associations, fraternal benefit societies, mutual and mutual assessment companies of all kinds and types,

state-wide assessment associations, local mutual aids, burial associations, county and farm mutual associations, fidelity, guaranty, and surety companies, trust companies organized under the provisions of Chapter 7 of the Texas Insurance Code of 1951, as amended, title insurance companies, stipulated premium insurance companies, group hospital service companies, health maintenance organizations, risk retention groups, and all other organizations, corporations, or persons transacting an insurance business, whether or not named above, unless such insurers are by statute specifically, by naming this article, exempted from the operation of this article.

(b) "Board" means the State Board of Insurance of Texas.

(c) "Commissioner" means the Commissioner of Insurance of Texas.

Section 2. Whenever the financial condition of an insurer when reviewed in conjunction with the kinds and nature of risks insured, the loss experience and ownership of the insurer, the ratio of total annual premium and net investment income to commission expenses, general insurance expenses, policy benefits paid, and required policy reserve increases, its method of operation, its affiliations, its investments, any contracts which lead or may lead to contingent liability, or agreements in respect to guaranty and surety, indicate a condition such that the continued operation of the insurer might be hazardous to its policyholders, creditors, or the general public, then the commissioner may, after notice and hearing, order the insurer to take such action as may be reasonably necessary to rectify the existing condition, including but not necessarily limited to one or more of the following steps:

(a) reduce the total amount of present and potential liability for policy benefits by reinsurance;

(b) reduce the volume of new business being accepted;

(c) reduce general insurance and commission expenses by specified methods;

(d) suspend or limit the writing of new business for a period of time; [or]

(e) increase the insurer's capital and surplus by contribution; or

(f) suspend or cancel the certificate of authority. The commissioner may use the remedies available under this section in conjunction with the provisions of Article 1.10A of this code when the commissioner determines that the financial condition of the insurer is hazardous and can be reasonably expected to cause significant and imminent harm to its policyholders of the general public.

SECTION . Section 2, Article 1.10A, Insurance Code, is amended to read as follows:

Sec. 2. **AUTHORITY TO ISSUE ORDER.** The commissioner may issue an emergency cease and desist order, ex parte, if:

(1) the commissioner believes:

(A) an authorized person engaging in the business of insurance is committing an unfair method of competition or an unfair or deceptive act or practice in violation of Article 21.21 or Article 21.21-2 of this code or in violation of a rule or regulation promulgated under Article 21.21 or Article 21.21-2 of this code;

code or in violation of a rule or regulation promulgated under Article 1.14-1 of this code; [or]

(C) an unauthorized person engaged in the business of insurance acting in violation of Article 1.14-1 of this code is committing an unfair method of competition or an unfair or deceptive act or practice in violation of Article 21.21 or Article 21.21-2 of this code or in violation of any rule or regulation promulgated under Article 21.21 or Article 21.21-2 of this code; or [and]

(D) an authorized person engaging in the business of insurance is determined by the commissioner to be in a hazardous condition or a hazardous financial condition under Article 1.32 or Article 20A.19 of this code; and

(2) it appears to the commissioner that the alleged conduct is fraudulent or hazardous or creates an immediate danger to the public safety or is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury.

SECTION __. Subsection (a), Section 19, Texas Health Maintenance Organization Act (Article 20A.19, Vernon's Texas Insurance Code) is amended to read as follows:

Section 19. HAZARDOUS FINANCIAL CONDITION. (a) Whenever the financial condition of any health maintenance organization indicates a condition such that the continued operation of the health maintenance organization might be hazardous to its enrollees, creditors, or the general public, then the commissioner of insurance may, after notice and hearing, order the health maintenance organization to take such action as may be reasonably necessary to rectify the existing condition, including but not necessarily limited to one or more of the following steps:

- (1) to reduce the total amount of present and potential liability for benefits by reinsurance;
- (2) to reduce the volume of new business being accepted;
- (3) to reduce expenses by specified methods;
- (4) to suspend or limit the writing of new business for a period of time;[or]
- (5) to increase the health maintenance organization's capital and surplus by contribution; or
- (6) to suspend or revoke the certificate of authority.

SECTION __. Section 1 of Article 22.18, Insurance Code is amended to read as follows:

Article 22.18. OTHER LAWS TO GOVERN

Sec. 1. The following Articles of this Code, to wit: Article 1.14, Article 1.15, Article 1.15A, Article 1.16, Article 1.19, Article 1.24, Article 1.32, Article 3.10, Article 3.13, Article 3.39, Article 3.40, Article 3.61, Article 3.62, Article 3.63, Article 3.67, Article 21.07-7, Article 21.21, Article 21.25, Article 21.26, Article 21.28, Article 21.32, Article 21.39, Article 21.45, and Article 21.47, shall apply to and govern stipulated premium companies and each company shall comply with the provisions thereof.

SECTION __. REPEALER. Article 3.55-1, Insurance Code, is repealed.

SECTION __. Article 3.28, Insurance Code, is amended by adding Section 2A to read as follows:

Sec. 2A. OPINION OF RESERVES. (a) GENERAL. (1) In conjunction with the annual statement and in addition to other information required by this article, every life insurance company doing business in this state shall annually submit to the State Board of Insurance the opinion of an actuary or other financial specialist as defined by Board rule as to whether the reserves and related actuarial items held in support of the policies and contracts specified by rule of the Board are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The Board by rule shall define the specific requirements of this opinion, the qualifications of the persons who may certify to such an opinion, and shall include any matters deemed to be necessary to the opinion's scope.

(2) The opinion required under this section shall apply to all business in force including individual and group health insurance plans, in form and substance as specified by Board rule and acceptable to the commissioner.

(3) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner

determines that the opinion filed in the other state reasonably meets the requirements applicable to a company domiciled in this state.

(4) A. Except in cases of fraud or wilful misconduct or as provided by Subsection (a) (7)B of this section, a person who certifies to an opinion under this section shall not be liable for damages to a person other than the insurance company covered by the opinion prepared by the certifying person for any act, error, omission, decision, or conduct with respect to the person's opinion.

(B) Subsection (a) 7A of this section does not apply to a monetary forfeiture imposed under Section 7, Article 1.10, Insurance Code.

(5) A company or a person who certifies to an opinion under this section and that fails to comply with or violates this section or rules adopted by the Board pursuant to this section is subject to disciplinary action under Section 7, Article 1.10, Insurance Code.

(6) A memorandum, in form and substance in compliance with rules of the State Board of Insurance, shall be prepared to support each opinion.

(7) If an insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified by rule or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the Board's rules or is otherwise unacceptable to the commissioner, the commissioner may engage an actuary or other financial specialist as defined by Board rule at the expense of the company to review the opinion and the basis for the opinion and prepare such supporting memorandum.

(b) ACTUARIAL ANALYSIS OF RESERVES AND ASSETS SUPPORTING SUCH RESERVES. Every life insurance company, except as exempted by or pursuant to rule adopted by the Board, shall also annually include in the opinion required by Subsection (a) (1) of this section, an opinion of the same person who certifies to the opinion under Subsection (a)(1) of this section as to whether the reserves and related actuarial items held in support of the policies and contracts specified by Board rule, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts. The rules adopted by the Board under this section shall exempt those companies that would be exempted from the requirements stated in this subsection (b) according to the most recently adopted regulation by the National Association of Insurance Commissioners entitled, "Model Actuarial Opinion and Memorandum Regulation" or its successor regulation.

SECTION . Article 3.28, Insurance Code is amended by adding Sections 8A and 9A to read as follows:

Sec 8A. MINIMUM AGGREGATE RESERVES. In no event shall aggregate reserves of a company covered by Section 8 of this article for all policies, contracts, and benefits be less than the aggregate reserves determined to be necessary to render the opinion required by Section 2A. of this article.

Sec. 9A. EFFECT OF OPINION ON STANDARD OF VALUATION. For the purposes of Section 9 of this article, the holding of additional reserves previously determined to be necessary to render the opinion required by Section 2A of this article shall not be deemed to be the adoption of a higher standard of valuation.

SECTION . The opinion submitted under Section 2A, Article 3.28, Insurance Code, shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after December 31, 1992.

SECTION . Article 1.15, Insurance Code, is amended by amending Section 1 and adding Sections 5 through 9 to read as follows:

Sec. 1. The State Board of Insurance shall once each year for the first three (3) years after organization or incorporation, and thereafter once in each three (3) years, or oftener, if the Board deems necessary, in person or by one or more examiners commissioned by such Board in writing, visit each carrier organized under the laws of this state and examine its financial condition and its ability to meet its liabilities, as well as its compliance with the laws of Texas affecting the conduct of its business; and such Board shall similarly, in person or by one or more commissioned examiners, visit and examine, either alone or jointly with representatives of the insurance supervising departments of other states, each insurance carrier not organized under the laws of this state but authorized to transact business in this state. Such Board or its commissioned examiners shall have free access to all the books and papers of the carrier or agents thereof relating to the business and affairs of such carrier, and shall have power to summon and examine under oath, if necessary, the officers, agents, and employees of such carrier and any other person [within the state] relative to the affairs of such carrier. Such Board may revoke or modify any certificate of authority issued by such Board or by any predecessor in office when any condition or requirement prescribed by law for granting it no longer exists. Such Board shall give such company at least ten (10) days written notice of its intention to revoke or modify such certificate of authority stating specifically the reason for the action it proposes to take.

Sec. 5. If a carrier or an agent of a carrier fails or refuses to comply with this article or rules adopted under this article or to comply with a request of the Board or a commissioned examiner to be examined or to provide information requested as part of an examination by the Board or commissioned examiner, the carrier is subject to disciplinary action under Article 1.10, Section 7, of this code, and the Commissioner of Insurance may institute disciplinary action pursuant to Article 1.10, Section 7, Insurance Code.

Sec. 6. Nothing contained in this article shall be construed to limit the Commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the Commissioner of Insurance may, in his or her sole discretion, deem appropriate.

Sec. 7. The Board, by rule, shall adopt procedures for filing and adoption of examination reports and for hearings to be held under this article and guidelines governing orders issued under this article.

Sec. 8. Upon the final adoption of an examination report, the Commissioner of Insurance shall continue to hold the content of the examination report as private and confidential information for a period of 30 days from the date the report becomes final. Thereafter, the Commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication.

The amendment was read and was adopted by a viva voce vote.

Senator Montford offered the following amendment to the bill:

Floor Amendment No. 16

Amend C.S.H.B. 2 by adding an appropriately numbered section to Article 11, to read as follows:

SECTION 11. Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.49-3b to read as follows:

Art. 21.49-3b. JOINT UNDERWRITING ASSOCIATIONS

Sec. 1. SHORT TITLE. This article may be cited as the Joint Underwriting Association Licensing Act.

Sec. 2. DEFINITIONS. In this article:

(1) "Board" means the State Board of Insurance.
(2) "Commissioner" means the commissioner of insurance.
(3) "Insurer" means any insurance company, corporation, inter-insurance exchange, mutual or reciprocal association, county mutual insurance company, Lloyd's, or other insurance carrier licensed to do business in this state. The term does not include a carrier that writes only life, health, or accident insurance, variable life insurance, or variable annuity contracts.

(4) "Joint underwriting association" means a voluntary unincorporated association of admitted insurers authorized to do business in this state that has been authorized by its member insurers to act on behalf of those insurers in joint underwriting or in the issuance of syndicate policies of insurance on a several but not joint basis.

Sec. 3. ACTING WITHOUT LICENSE PROHIBITED. An association of insurers may not act as a joint underwriting association in this state on behalf of its member insurers unless it holds a license issued under this article.

Sec. 4. APPLICATION. (a) Each association of insurers that applies for a license under this article must file a written application on forms prescribed by the commissioner.

(b) The application shall include:

(1) the names and addresses of the officers and directors of the association;

(2) a copy of the association's constitution, articles of agreement or association, bylaws, rules, powers of attorney, or other agreements governing its activities;

(3) a list of the insurers licensed to do business in this state who are members of the association and the addresses of their principal administrative offices;

(4) the name and address of a resident of this state who shall act as the association's agent for receipt of notices or orders of the board and for service of process; and

(5) other information as required by the commissioner.

(c) The application shall be sworn to by at least one officer of the association.

Sec. 5. ISSUANCE OF LICENSE. The commissioner shall issue a license to a voluntary unincorporated association of insurers that complies with the requirements of this article.

Sec. 6. LICENSE BY RECIPROCITY. The board may waive any of the license requirements for an applicant with a valid license from another state that has license requirements substantially equivalent to those of this state.

Sec. 7. AUTHORITY TO ACT. (a) A joint underwriting association may act only on behalf of members of the association who are admitted and licensed to do business in this state.

(b) A joint underwriting association may engage in only those activities it is authorized to perform by the members of the association.

Sec. 8. REQUIREMENTS FOR LICENSED ASSOCIATIONS. (a) Each association licensed under this article shall file a list of the names and addresses of its officers and directors and a list of its members with the application for a renewal license filed under Section 11 of this article. The list shall be sworn to by at least one officer of the association.

(b) Each association licensed under this article shall notify the commissioner of any change in any of the information required to be filed under Section 4 of this article not later than the 30th day after the date on which the change takes effect.

Sec. 9. MAINTENANCE OF INFORMATION. (a) Each joint underwriting association shall maintain at its principal administrative office adequate records of all transactions.

(b) The association shall maintain the records in accordance with prudent recognized industry standards of recordkeeping.

(c) The commissioner or the commissioner's designated representative is entitled to access to those records for examination, audit, and inspection.

(d) Trade secrets, including the identity and addresses of policyholders and certificate holders, are confidential, except that the commissioner may use information otherwise confidential in proceedings instituted against an association.

Sec. 10. INDEPENDENT AUDITS AND EXAMINATION. (a) The books of accounts of joint underwriting associations shall be audited annually as provided by Article 1.15A of this code by an independent certified public accountant, and a copy of that audit shall be filed with the commissioner.

(b) The board may require an examination of each joint underwriting association as often as it considers necessary. The reasonable costs of the examination shall be paid by the association on presentation to the association of a detailed account of those costs. The officers and employees of the association may be examined at any time, under oath, and shall exhibit on request all books, records, accounts, documents, or agreements governing the operations of the association. Instead of the examination, the board may accept the report of an examination made by the insurance supervisory official of another state under the laws of that state.

Sec. 11. TERM OF LICENSE; RENEWAL. Each license issued under this article expires three years from the date of issuance unless renewed. To renew the license, an application for renewal must be filed with the commissioner by the renewal applicant and the renewal fee paid on or before the expiration of the license. A renewed license continues in effect for three years after the date of renewal unless otherwise revoked or suspended.

Sec. 12. FEES. An applicant for an original or renewal joint underwriting association license shall pay a nonrefundable fee when the application is filed in an amount set by the board, but not to exceed \$200.

Sec. 13. DENIAL, REFUSAL, SUSPENSION, OR REVOCATION OF LICENSE. A license may be denied, suspended, or revoked or the renewal of the license refused if, after notice and hearing as provided by Section 14 of this article, the commissioner finds that the license applicant or license holder, or an officer or director of a license applicant or license holder, has:

(1) wilfully violated or participated in the violation of this article or any other insurance law of this state;

(2) intentionally made a material misstatement in the original or renewal license application;

(3) obtained or attempted to obtain the license by fraud or misrepresentation;

(4) misappropriated or converted to a personal or other inappropriate use or illegally withheld money required to be held in a fiduciary capacity;

(5) been convicted of a felony, or of any misdemeanor of which criminal fraud is an essential element; or

(6) been found by the commissioner to be incompetent or untrustworthy.

Sec. 14. NOTICE; HEARINGS. (a) Before a license may be denied, suspended, or revoked or the renewal of the license refused, the commissioner shall give notice by certified mail to the applicant or license holder and shall set a date on which the applicant or license holder may appear to be heard and to produce evidence. The hearing date must be not less than 20 days or more than 30 days after

the date on which the notice is mailed. The notice must contain specific reasons for the hearing and a list of the matters to be considered at the hearing. At the hearing, the commissioner or any regular employee of the board designated to conduct the hearing may administer oaths, require the appearance of witnesses, examine any person under oath, and require the production of books, records, or papers relevant to the inquiry on the initiative of the commissioner or on the request of the applicant or license holder.

(b) On the termination of the hearing the findings shall be written and, on approval by the commissioner, shall be filed with the board. The commissioner shall issue an order showing the findings, and shall send the order by certified mail to the applicant or license holder. The applicant or license holder may appeal the order of the commissioner to the board.

(c) If the commissioner refuses an application for a license as provided by this article, or suspends, revokes, or refuses to renew a license at a hearing as provided by this article, the applicant or license holder may appeal from that action as provided by Article 1.04 of this code.

(d) An applicant or license holder whose license has been denied, refused, or revoked under this article may not file another license application before the first anniversary of the effective date of the denial, refusal, or revocation or, if judicial review of the denial, refusal, or revocation is sought, before the first anniversary of the date of the final court order or decree affirming that action. If an application is filed after that first anniversary, the commissioner may refuse the application unless the applicant shows good cause why the denial, refusal, or revocation of the original license should not be a bar to the issuance of a new license.

Sec. 15. EXEMPTION. This article does not apply to the transaction of life, health, or accident insurance business.

Sec. 16. DISPOSITION OF FEES. Fees collected under this article shall be deposited in the state treasury to the credit of the State Board of Insurance operating fund. Funds may not be appropriated from the general revenue fund to administer this article.

Sec. 17. VIOLATIONS; ENFORCEMENT. (a) An association that violates this article or any rule or order adopted under this article is subject to sanctions under Section 7, Article 1.10 of this code. In determining the amount of any penalty, the board shall consider:

- (1) the nature, circumstances, extent, and gravity of the violation;
- (2) any economic benefit gained through the violation;
- (3) the amount necessary to deter future violations; and
- (4) any other matters that justice may require.

(b) The attorney general, a district or county attorney, the commissioner, or the board may institute an injunction proceeding or any other proceeding necessary to enforce this article.

Sec. 18. A joint underwriting association is not required to hold a license issued under Article 21.49.3b, Insurance Code before January 1, 1992.

The amendment was read and was adopted by a viva voce vote.

Senator Glasgow offered the following amendment to the bill:

Floor Amendment No. 16a

Amend C.S.H.B. 2 as follows:

- (1) On page 279, strike lines 19 through 21 and substitute the following:

direct premiums written in this state during a calendar year [or that has less than a total of 1,000 policyholders and certificateholders at the end of a calendar year], in lieu of the annual

(2) On page 279, strike lines 24 and 25 and substitute the following:

Specifies the amount of direct premiums written in this state [~~and the total number of policyholders and certificateholders~~],

The amendment was read.

On motion of Senator Glasgow and by unanimous consent, the amendment was withdrawn.

Senator Montford offered the following amendment to the bill:

Floor Amendment No. 17

Amend C.S.H.B. 2 as follows:

On page 164, line 11, delete "and" and restore "or", add "a" before "board" and add "member" after "board."

The amendment was read and was adopted by a viva voce vote.

Senator Montford offered the following amendment to the bill:

Floor Amendment No. 17a

Amend C.S.H.B. 2 as follows:

Section 11.02 (Article 1.15A)

Amend Section 11.02 on page 279, line 19 by striking the following: "or that has less than a total of 1,000 policyholders and certificate holders at the end of a calendar year".

On page 279, line 24 strike the following: "and its [the] total number of policyholders and certificate holders".

The amendment was read and was adopted by a viva voce vote.

Senator Harris of Dallas offered the following amendment to the bill:

Floor Amendment No. 18

Amend Section 2.01, Sec. 3(h)(1) of C.S.H.B. 2 as follows:

Insert the phrase ", not including acquisition, loss control and safety engineering expenses" between the words "expenses" and "that" on line 7, page 45.

The amendment was read and was adopted by a viva voce vote.

Senator Harris of Dallas offered the following amendment to the bill:

Floor Amendment No. 19

Amend Section 10.06, subsection (g) (page 273, line 7) of C.S.H.B. 2 by adding the following:

"Furthermore, a secured creditor may obtain a release of the motor vehicle from impoundment upon presentation to the sheriff of a certificate of title with notation of the secured creditor's lien and an accompanying affidavit from an officer of the secured creditor establishing that the loan secured by the motor vehicle is in default or has matured."

The amendment was read and was adopted by a viva voce vote.

Senator Harris of Dallas offered the following amendment to the bill:

Floor Amendment No. 20

Amend C.S.H.B. 2 by deleting the phrase "or the office of public insurance counsel" on line 18 of page 105.

The amendment was read.

On motion of Senator Harris of Dallas and by unanimous consent, the amendment was withdrawn.

Senator Harris of Dallas offered the following amendment to the bill:

Floor Amendment No. 21

Amend Section 2.36A of C.S.H.B. 2 as follows: strike SECTION 2.36A at page 98, line 13 and substitute the following:

SECTION 2.36A, Sec. 9, Article 5.43-2, Texas Insurance Code is amended as follows:

Sec. 9. (a) Except as provided in subsection (b) of this section, no [No] detection or alarm device, alarm system, or monitoring equipment, a purpose of which is to detect and/or give alarm of fire, may be sold, offered for sale, leased, installed, or used to monitor property in this state unless it carries a label of approval or listing of a testing laboratory approved by the State Board of Insurance; provided, however, that the continued use or monitoring of equipment in place which complied with applicable law at the time of its original placement, without extension, modification or alteration is not prohibited.

(b) No detection or alarm device, alarm system, or monitoring equipment in one or two family residences, a purpose of which is to detect and/or give alarm of fire, may be sold, offered for sale, leased, installed, or used to monitor property in this state after April 14, 1989, unless it carries a label of approval or listing of a testing laboratory approved by the State Board of Insurance; provided, however, that the continued use or monitoring of equipment in place which otherwise complied with applicable law at the time of its original placement, without extension, modification or alteration is not prohibited.

(c) Fire alarm devices that are not required by this statute or rules adopted under this statute and that do not impair the operation of fire alarm or fire detection devices required by this statute or the rules adopted under this statute are exempt from the requirement of a label of approval or listing of a testing laboratory approved by the Board if such devices are approved by the local authority having jurisdiction.

(d) [(b)] No fire detection or fire alarm device may be sold or installed in this state unless accompanied by printed information supplied to the owner by the supplier or installing contractor concerning:

(1) instructions describing the installation, operation, testing, and proper maintenance of the device;

(2) information which will aid in establishing an emergency evacuation plan for the protected premises; and

(3) the telephone number and location, including notification procedures, of the nearest fire department.

The amendment was read and was adopted by a viva voce vote.

Senator Harris of Dallas offered the following amendment to the bill:

Floor Amendment No. 22

Amend C.S.H.B. 2, Section 11.24, Article 21.71, subparagraph (b), page 366, lines 2-4, to read as follows:

"(b) This article does not apply to an insurer whose gross initial premium receipts collected in this state are less than \$2 million a year or to an insurer with regard to fidelity, surety, or guaranty bonds."

The amendment was read and was adopted by a viva voce vote.

Senator Harris of Dallas offered the following amendment to the bill:

Floor Amendment No. 23

Amend C.S.H.B. 2, Section 11.02, by amending Section 7, pages 281-285, to read as follows:

"Sec. 7. FINANCIAL HARDSHIP EXEMPTION. (a) An insurer otherwise subject to this article and not eligible for an exemption under Section 4, 5, or 6 of this article may apply to the commissioner for a financial hardship exemption or a financial hardship examination.

(b) Financial hardship is presumed to exist if the projected reasonable costs of the audit would exceed the lesser of:

(1) one percent of the insurer's capital and surplus reflected in the insurer's annual statement filed with the board for the calendar year for which the exemption is sought; or

(2) three percent of the insurer's net direct premiums written in this state during the calendar year for which the exemption is sought as reflected in the insurer's annual statement filed with the board. The expense fund of each mutual assessment company or association regulated by Chapter 14, Insurance Code, shall for purposes of this subsection be deemed and considered to be the capital and surplus of that company or association.

(c) Upon a finding of financial hardship as provided by this section, the commissioner shall either:

(1) exempt the insurer from the requirements of this article; or

(2) direct a financial hardship examination to be performed in the manner provided in Article 1.15 of this code. If the commissioner directs an examination, the costs of each examination shall be paid by each insurer examined, and each examination shall be conducted by examiners employed as regular staff of the State Board of Insurance.

(d) The application for a financial hardship exemption must include an affidavit sworn to by a responsible officer of the insurer that specifies:

(1) the projected costs of the independent audit;

(2) the insurer's capital and surplus or the amount of the insurer's direct premiums written in this state for the calendar year as reflected by the annual statement filed with the board;

(3) the name of the accountant who prepared the projected cost of the audit; and

(4) any other information required under rules adopted by the board pursuant to this article.

(e) The accountant providing the projected cost estimate under Subsection (d)(i) of this article must be registered with the commissioner as required by Section 11 of this article. The commissioner may not accept a projected cost under Subsection (d)(i) of this section from an insurer that is prepared by an accountant that is not registered pursuant to Section 1 of this article.

(f) The application for an exemption must be submitted to the commissioner on or before April 30 of the calendar year in which the audited financial report is required by this article to be filed.

(g) If an insurer does not qualify for an exemption for financial hardship under Subsection (b) of this section, the insurer may submit an application for a financial

hardship exemption together with an affidavit sworn to by a responsible officer of the insurer that specifies the reasons that compliance with this article will create a financial hardship. The application and affidavit must be submitted to the commissioner in the form required by the commissioner on or before April 30 of the calendar year in which the audited financial report is required by this article to be filed. The commissioner may grant a financial hardship exemption for reasons other than those listed in Subsection (b) of this section if the commissioner finds that the reasons stated in the application and affidavit constitute a financial hardship."

The amendment was read.

On motion of Senator Harris of Dallas and by unanimous consent, the amendment was withdrawn.

Senator Harris of Dallas offered the following amendment to the bill:

Floor Amendment No. 24

Amend C.S.H.B. 2 as follows:

Add an appropriately numbered section to read as follows:

SECTION_____, Article 21.54, Section 11.(b), Insurance Code, is amended to read as follows:

Article 21.54, Section 11.(b) No claim against a purchasing group or its members shall be entitled to payment from any insurance insolvency guaranty fund or similar mechanism in this state, nor shall a purchasing group or its members or claimants against the group or its members receive any benefit from such fund for claims arising under the insurance policies procured through the purchasing group, unless such policies are underwritten by insurance companies that are licensed in this state and have capital and surplus of at least \$25 million at the time the policy was issued.

The amendment was read.

On motion of Senator Harris of Dallas and by unanimous consent, the amendment was withdrawn.

Senator Harris of Dallas offered the following amendment to the bill:

Floor Amendment No. 25

Amend C.S.H.B. 2 by adding new sections to be numbered SECTION 2.17A, SECTION 2.17B, and SECTION 2.17C, after line 17 on page 72, to read as follows:

SECTION 2.17A. Section 1, Article 6.04, Title 79, Revised Statutes (Article 5069-6.04, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) On any retail installment contract or retail charge agreement made under the authority of this Chapter, a seller or holder may request or require a buyer to provide credit life insurance and credit health and accident insurance and may request or allow a buyer to provide credit involuntary unemployment insurance as additional protection for such contract or agreement and include the cost of such insurance as a separate charge in such contract or agreement. Policies of credit life insurance, [or] credit health and accident insurance, or credit involuntary unemployment insurance may not be in force with respect to any one buyer on any one such contract or agreement at any one time that in combination exceed:

(i) as to credit life insurance, the total amount repayable under the contract of indebtedness and, where an indebtedness is repayable in substantial equal installments, the amount of insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater, or

(ii) as to credit accident and health insurance and credit involuntary unemployment insurance, the total amount repayable under the contract of indebtedness and the amount of each periodic indemnity payment shall not exceed the scheduled periodic installment payment on the indebtedness.

SECTION 2.17B. Article 6.04, Title 79, Revised Statutes (Article 5069-6.04, Vernon's Texas Civil Statutes), is amended by adding Section (11) to read as follows;

(11) A retail seller may include any type of insurance premium in the billing of its accounts so long as no charge is made to the retail buyer in connection therewith.

SECTION 2.17C. Chapter 21, Insurance Code, is amended by adding Article 21.79E to read as follows:

Art. 21.79E. CREDIT INVOLUNTARY UNEMPLOYMENT INSURANCE.

(a) Any insurer authorized to write any form of casualty insurance in this state shall also be authorized to write group or individual credit involuntary unemployment insurance indemnifying a debtor for installment or other periodic payments on the indebtedness while the debtor is involuntarily unemployed. Such insurance may be written alone or in conjunction with credit life insurance, credit accident and health insurance, or both, in policies issued by any authorized insurer, but not in contravention of the Texas Free Enterprise and Antitrust Act of 1983. Rates and forms for such insurance may be made and filed in accordance with Articles 5.14 and 5.15 of this code.

The amendment was read and was adopted by a viva voce vote.

Senator Harris of Dallas offered the following amendment to the bill:

Floor Amendment No. 26

Amend C.S.H.B. 2 by adding a new Article ____ to read as follows and renumber the succeeding Articles in consecutive numerical sequence:

SECTION 1. Section 2. Texas Health Maintenance Organization Act (Article 20A.02, Vernon's Texas Insurance Code), Subsection (g), is amended to read as follows:

(g) "Health care" means prevention, maintenance, [and] rehabilitation, pharmaceutical, and chiropractic services provided by qualified persons other than medical care.

SECTION 2. Section 2. Texas Health Maintenance Organization Act (Article 20A.02, Vernon's Texas Insurance Code), Subsection (i), is amended to read as follows:

(i) "Health care services" means any services, including the furnishing to any individual of pharmaceutical services, medical, chiropractic or dental care, or hospitalization, as well as the furnishing to any person of any and all other services for the purpose of preventing, alleviating, curing or healing human illness or injury.

SECTION 3. Section 2. Texas Health Maintenance Organization Act (Article 20A.02, Vernon's Texas Insurance Code), Subsection (n), is amended to read as follows:

(n) "Provider" means any practitioner other than a physician, such as a licensed doctor of chiropractic, registered nurse, pharmacist, optometrist, pharmacy, hospital, or other institution or organization or person that furnishes health care services, who is licensed or otherwise authorized to practice in this state.

SECTION 4. The Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code) is amended by adding Section 14A to read as follows:

Sec. 14A. PARTICIPATION BY PROVIDERS AND PHYSICIANS. (a) A health maintenance organization that provides coverage for health care services or

medical care through one or more Providers or Physicians who are not partners or employees of the health maintenance organization or one or more Providers or Physicians that are not owned or operated by the health maintenance organization shall provide each calendar year a period of at least 30 consecutive days during which any Provider or Physician in the service area may elect to participate in providing health care services under the same terms that apply to the other Providers or Physicians of the same license who are participants.

(b) A Provider or Physician that elects to participate under Subsection (a) of this section may continue to participate as long as the Provider or Physician provides health care services or medical care that meet the terms that apply to all Providers or Physicians participating of the same license in the health maintenance organization's health care plan.

SECTION 5. (a) This Article takes effect September 1, 1991, and each health maintenance organization operating in this state on that date must comply with the requirements of Section 14A, Texas Health Maintenance Organization Act (Article 20A.14A, Vernon's Texas Insurance Code), as added by this Article, not later than January 1, 1992.

(b) If a requirement of Section 14A of the Texas Health Maintenance Organization Act will be violated by a contract between the health maintenance organization and another person that is executed before the effective date of this Article and in effect on January 1, 1991, the health maintenance organization is not required to comply with Section 14A before the 31st day after the date on which the contract expires.

The amendment was read and was adopted by a viva voce vote.

Senator Henderson offered the following amendment to the bill:

Floor Amendment No. 26a

Amend C.S.H.B. 2 by deleting Article 21.58 in Section 11.03 of the bill.

The amendment was read.

Senator Parker moved to table the amendment.

The motion to table was lost by the following vote: Yeas 12, Nays 17.

Yeas: Barrientos, Carriker, Dickson, Ellis, Glasgow, Green, Johnson, Lyon, Parker, Rosson, Truan, Whitmire.

Nays: Armbrister, Brooks, Brown, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Krier, Leedom, Lucio, Moncrief, Montford, Ratliff, Sibley, Sims, Tejeda, Zaffirini.

Absent: Bivins, Turner.

Question recurring on the adoption of Floor Amendment No. 26a, the amendment failed of adoption by the following vote: Yeas 14, Nays 16.

Yeas: Armbrister, Brooks, Brown, Harris of Dallas, Henderson, Krier, Leedom, Lucio, Moncrief, Montford, Ratliff, Sibley, Tejeda, Zaffirini.

Nays: Barrientos, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Harris of Tarrant, Johnson, Lyon, Parker, Rosson, Sims, Truan, Turner, Whitmire.

Absent: Bivins.

(Senator Barrientos in Chair)

Senator Leedom offered the following amendment to the bill:

Floor Amendment No. 27

Amend C.S.H.B. 2 as follows:

In Section 2.01 of the bill, delete Section 3(h)(7), Article 5.101, Insurance Code (page 45, lines 23-24) and substitute the following:

(7) contributions to social, religious, political, or fraternal organizations, other than contributions made to charitable organizations exempt from taxation under Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Sec. 501(c)(3));

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The amendment was read and failed of adoption by the following vote: Yeas 11, Nays 16.

Yeas: Brooks, Brown, Carriker, Haley, Henderson, Krier, Leedom, Lucio, Montford, Sims, Tejeda.

Nays: Armbrister, Barrientos, Dickson, Ellis, Green, Harris of Tarrant, Johnson, Lyon, Moncrief, Parker, Rosson, Sibley, Truan, Turner, Whitmire, Zaffirini.

Absent: Bivins, Glasgow, Harris of Dallas, Ratliff.

Senator Moncrief offered the following amendment to the bill:

Floor Amendment No. 28

Amend C.S.H.B. 2 by inserting in the appropriate place the following:

SECTION 1. Subsection (a), Section 3, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended by adding Subdivision (19) to read as follows:

(19) For the purposes of this section, "serious mental illness" means the following psychiatric illnesses as defined by the American Psychiatric Association in the Diagnostic and Statistical Manual (DSM) III-R:

(A) schizophrenia;

(B) paranoid and other psychotic disorders;

(C) bipolar disorders (mixed, manic, and depressive);

(D) major depressive disorders (single episode or recurrent); and

(E) schizo-affective disorders (bipolar or depressive).

SECTION 2. Subsection (j), Section 5, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended to read as follows:

(j) The trustee may not contract for a plan of group coverage or with a health maintenance organization or provide coverage directly from the fund that:

(1) excludes or limits coverage or services for acquired immune deficiency syndrome, as defined by the Centers for Disease Control of the United States Public Health Service, or human immunodeficiency virus infection; or

(2) provides coverage for serious mental illness that is less extensive than the coverage provided for any other physical illness.

SECTION 3. Subsection (a), Section 3, Texas State College and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code), is amended by adding Subdivision (16) to read as follows:

(16) For purposes of this section, "serious mental illness" means the following psychiatric illnesses as defined by the American Psychiatric Association in the Diagnostic and Statistical Manual (DSM) III-R:

- (A) schizophrenia;
- (B) paranoid and other psychotic disorders;
- (C) bipolar disorders (mixed, manic, and depressive);
- (D) major depressive disorders (single episode or

recurrent); and

- (E) schizo-affective disorders (bipolar or depressive).

SECTION 4. Section 4A, Texas State College and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code), as added by Section 12, Chapter 1041, Acts of the 71st Legislature, Regular Session, 1989, is redesignated as Section 4C and is amended to read as follows:

Sec. 4C [4A]. EXCLUDING OR LIMITING CERTAIN COVERAGES PROHIBITED. The administrative council shall include in its basic coverage standards a standard that prohibits an institution, in contracting for group insurance or health maintenance organization coverage or in self-insuring its own coverage, from contracting for or providing in that coverage:

(1) an exclusion or limitation on coverage or services for acquired immune deficiency syndrome, as defined by the Centers for Disease Control of the United States Public Health Service, or human immunodeficiency virus infection; or

(2) provides coverage for serious mental illness that is less extensive than the coverage provided for any other physical illness.

SECTION 5. Article 3.51-5A, Insurance Code, is amended to read as follows:

Art. 3.51-5A. LOCAL GOVERNMENTS PROHIBITED FROM EXCLUDING OR LIMITING CERTAIN COVERAGES. (a) A municipality, county, school district, district created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, or other political subdivision of the state that provides group health insurance coverage, health maintenance organization coverage, or self-insured health care coverage to its officers or employees or to both its officers and employees may not contract for or provide coverage that:

(1) excludes or limits coverage or services for acquired immune deficiency syndrome, as defined by the Centers for Disease Control of the United States Public Health Service, or human immunodeficiency virus infection; or

(2) is less extensive for serious mental illness than the coverage provided for any other physical illness.

(b) For purposes of this article, "serious mental illness" means the following psychiatric illnesses as defined by the American Psychiatric Association in the Diagnostic and Statistical Manual (DSM) III-R:

- (1) schizophrenia;
- (2) paranoid and other psychotic disorders;
- (3) bipolar disorders (mixed, manic, and depressive);
- (4) major depressive disorders (single episode or recurrent); and
- (5) schizo-affective disorders (bipolar or depressive).

SECTION 6. Section 3C, Article 3.51-6, Insurance Code, as added by Section 14, Chapter 1041, Acts of the 71st Legislature, Regular Session, 1989, is redesignated as Section 3E and is amended to read as follows:

Sec. 3E [3C]. COVERAGE OF CERTAIN ILLNESSES. (a) No group policy of accident, health, or accident and health insurance including group contracts issued by any hospital and medical service plan corporation subject to Chapter 20 of this code and health maintenance organization subject to Chapter 20A of this code shall be delivered or issued for delivery or renewed that:

(1) excludes or denies coverage for HIV, AIDS, or HIV-related illnesses; or

(2) provides coverage for serious mental illness that is less extensive than the coverage provided for any other physical illness.

(b) For purposes of this section, "serious mental illness" means the following psychiatric illnesses as defined by the American Psychiatric Association in the Diagnostic and Statistical Manual (DSM) III-R:

- (1) schizophrenia;
- (2) paranoid and other psychotic disorders;
- (3) bipolar disorders (mixed, manic, and depressive);
- (4) major depressive disorders (single episode or recurrent); and
- (5) schizo-affective disorders (bipolar or depressive).

SECTION 7. Subchapter E, Chapter 3, Insurance Code, is amended by adding Article 3.51-14 to read as follows:

Art. 3.51-14. MANDATORY PROVISION OF BENEFITS FOR CERTAIN SERIOUS MENTAL ILLNESSES

Sec. 1. DEFINITION. For purposes of this article, "serious mental illness" means the following psychiatric illnesses as defined by the American Psychiatric Association in the Diagnostic and Statistical Manual (DSM) III-R:

- (1) schizophrenia;
- (2) paranoid and other psychotic disorders;
- (3) bipolar disorders (mixed, manic, and depressive);
- (4) major depressive disorders (single episode or recurrent); and
- (5) schizo-affective disorders (bipolar or depressive).

Sec. 2. MANDATORY COVERAGE; EXEMPTION. (a) Each insurer, nonprofit hospital service plan corporation subject to Chapter 20 of this code, health maintenance organization subject to the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code), employer, multiple employer, union, association, trustee, or other self-funded or self-insured welfare or benefit plan, program, or arrangement that issues group health insurance policies, enters into health care service contracts or plans, or provides for group health benefits, coverage, or services in this state for hospital, medical, or surgical expenses incurred as a result of accident or sickness shall offer and make available to each group policyholder, contract holder, employer, multiple employer, union, association, or trustee under a group policy, contract, plan, program, or arrangement that provides hospital, surgical, and medical benefits, coverage for services and benefits on an expense-incurred, service, or prepaid basis for expenses incurred for the necessary care, diagnosis, and treatment of serious mental illnesses.

(b) This section does not apply to coverage under:

- (1) a blanket accident and health insurance policy as that term is defined under Section 2, Article 3.51-6 of this code;
- (2) a short-term travel policy;
- (3) an accident-only policy;
- (4) a limited or specified-disease policy; or
- (5) a medicare supplement policy, as that term is defined under Section 1(3), Article 3.74 of this code.

Sec. 3. LEVEL OF COVERAGE. The coverage offered under this article for services and benefits for the condition of serious mental illness must be at least as favorable as the coverage made available for services and benefits provided by the insuring entity for other major illnesses and must include the same durational limits, amount limits, deductibles, and coinsurance factors.

SECTION 8. This Act takes effect September 1, 1991, and applies to an insurance policy, contract, plan, or evidence of coverage that is delivered, issued for delivery, or renewed on or after January 1, 1992. A policy, contract, plan, or evidence of coverage delivered, issued for delivery, or renewed before January 1,

1992, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted by a viva voce vote.

RECORD OF VOTE

Senator Montford asked to be recorded as voting "Nay" on the adoption of the amendment.

Senator Brooks offered the following amendment to the bill:

Floor Amendment No. 29

Amend C.S.H.B. 2 as follows:

On page 374, SECTION 11.34, on line 13 after "(d)" insert "and (f)".

On line 18 insert the following:

(f) "Insurable Property" means immovable property at fixed locations in a catastrophe area or corporeal movable property located therein (as may be designated in the plan of operation) which property is determined by the Association, pursuant to the criteria specified in the plan of operation to be in an insurable condition against windstorm, hail and/or fire and explosion as appropriate, as determined by normal underwriting standards; provided, however, that insofar as windstorm and hail insurance is concerned, any structure located within the seacoast territory as defined by the State Board of Insurance in the General Basis Schedule, commenced on or after the 30th day following the publication of the plan of operation, not built or continuing in compliance with building specifications set forth in the plan of operation shall not be an insurable risk under the terms of the Act. A structure, or an addition thereto, which is constructed in conformity with plans and specifications that comply with the specifications set forth in the plan of operation at the time construction commences shall not be declared ineligible for windstorm and hail insurance as a result of subsequent changes in the building specifications as set forth in the plan of operation. When repair or damage to a structure involves replacement of items covered in the building specifications as set forth in the plan of operation, such repairs must be completed in a manner to comply with such specifications for the structure to continue within the definition of Insurable Property for windstorm and hail insurance. Nothing in this Act shall preclude special rating of individual risks as may be provided in the plan of operation. For purposes of this Act, all structures which are located within those areas designated as units under the federal Coastal Barrier Resources Act (Public Law 97-348) and for which construction has commenced on or after July 1, 1991 shall not be considered insurable property.

BROOKS
PARKER

The amendment was read and was adopted by a viva voce vote.

(President in Chair)

Senator Glasgow offered the following amendment to the bill:

Floor Amendment No. 30

Amend C.S.H.B. 2 by adding the following language as a new SECTION 11.73 and renumbering the existing SECTION 11.73 and subsequent SECTIONS accordingly.

Section 2, Article 21.14, Insurance Code, is amended to read as follows:

Sec. 2. DEFINITIONS; CERTAIN ORDERS, SOCIETIES OR ASSOCIATIONS NOT AFFECTED. (a) In this article:

(1) ~~[By the term]~~ "Local Recording Agent" means [is meant] a person or firm engaged in soliciting and writing insurance, being authorized by an insurance company or insurance carrier, including fidelity and surety companies, to solicit business and to write, sign, execute, and deliver policies of insurance, and to bind companies on insurance risks, and who maintain an office and a record of such business and the transactions which are involved, who collect premiums on such business and otherwise perform the customary duties of a local recording agent representing an insurance carrier in its relation with the public; or a person or firm engaged in soliciting and writing insurance, being authorized by an insurance company or insurance carrier, including fidelity and surety companies, to solicit business, and to forward applications for insurance to the home office of the insurance companies and insurance carriers, where the insurance company's and insurance carrier's general plan of operation in this State provides for the appointment and compensation of agents for insurance and for the execution of policies of insurance by the home office of the insurance company or insurance carrier, or by a supervisory office of such insurance company or insurance carrier, and who maintain an office and a record of such business and the transactions which are involved, and who collect premiums on such business and otherwise qualify and perform the customary duties of a local recording agent representing an insurance carrier in its relation with the public.

(2) ~~[By the term]~~ "Solicitor" means [is meant] a person who is a bona fide solicitor ~~[in the office of;]~~ and engaged in the business of soliciting and binding insurance risks on behalf of a local recording agent, and who offices with such local recording agent, and who does not sign and execute policies of insurance, and who does not maintain company records of such transactions. This shall not be construed to make a solicitor of a local recording agent, who places business of a class which the rules of the company or carrier require to be placed on application or to be written in a supervisory office. A solicitor may bind insurance risks only with the express prior approval of the local recording agent for whom the solicitor works.

(3) ~~[By the term]~~ "Board" means [is meant] ~~[as used in this article;]~~ the State Board of Insurance ~~[Commissioners]~~.

(4) ~~[Where reference is made in this article to]~~ "Company" or "Carrier" ~~[such reference]~~ means any insurance company, corporation, inter-insurance exchange, mutual, reciprocal, association, Lloyds or other insurance carrier licensed to transact business in the State of Texas other than as excepted herein.

(5) "Insurance service representative" means a solicitor employed on a salaried basis who performs assigned duties only within the office of a local recording agent, which may include binding insurance risks, but only with the express prior approval of the local recording agent for whom the representative works.

(b) Nothing contained in this article shall be so construed as to affect or apply to orders, societies, or associations which admit to membership only persons

engaged in one or more crafts or hazardous occupations in the same or similar lines of business, and the ladies' societies, or ladies' auxiliary to such orders, societies or associations, or any secretary of a Labor Union or organization, or any secretary or agent of any fraternal benefit society, which does not operate at a profit.

SECTION 2. Section 6, Article 21.14, Insurance Code, is amended to read as follows:

Sec. 6. EXAMINATION REQUIRED; EXCEPTIONS. (a) If applicant for a local recording agent's license has not prior to date of such application, been licensed as a local recording agent, or if the applicant for a solicitor's license has not been licensed as a local recording agent or as a solicitor prior to date of such application, the Board ~~[of Insurance Commissioners]~~ shall require such applicant to submit to a written examination covering all kinds of insurance or contracts, which license if granted, will permit the applicant to solicit.

(b) Any applicant for local recording agent's license who has prior to the date of such application been licensed as a local recording agent, shall be entitled to a local recording agent's license without examination, provided the other requirements of this article are met. Any applicant for solicitor's license who has been licensed as a local recording agent or as a solicitor prior to date of such application, shall be entitled to a solicitor's license without an examination, provided the other requirements of this article are met.

(c) The Board by rule shall apply different examination standards to a solicitor employed as an insurance service representative than those applied to other solicitors.

The amendment was read and was adopted by a viva voce vote.

Senator Glasgow offered the following amendment to the bill:

Floor Amendment No. 31

Amend C.S.H.B. 2, on page 362, by inserting a new SECTION 11.22 between lines 4 and 5 to read as follows and renumbering:

SECTION 11.22. Amend Article 1.14-2, Insurance Code, by adding a new Section 17B to read as follows:

Sec. 17B. WRONGFULLY OBTAINING UNAUTHORIZED INSURANCE; ADMINISTRATIVE PENALTY. (a) A person commits an administrative violation if the person knowingly or intentionally obtains or maintains insurance coverage from an insurer that:

(1) is not authorized to do business in this state; and

(2) is not a surplus lines insurer for insurance that is eligible for surplus lines insurance as provided under this article.

(b) An administrative violation under this section is punishable by an administrative penalty not to exceed \$5,000.

(c) The commissioner may assess an administrative penalty against a person who commits an administrative violation under this section.

(d) The commissioner shall consider the following factors in assessing administrative penalty:

(1) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;

(2) the history and extent of previous administrative violations;

(3) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;

(4) any economic benefit resulting from the prohibited act;

(5) the administrative penalty necessary to deter future violations; and

(6) any other matters that justice may require.

(e) An administrative penalty may be assessed only after the person charged with an administrative violation has been given an opportunity for a hearing under this section.

(f) Any person may request the initiation of administrative violation proceedings by filing written allegations with the department.

(g) If investigation by the department indicates that an administrative violation has occurred, the department shall notify the person in writing of:

- (1) the charge;
- (2) the proposed administrative penalty;
- (3) the right to consent to the charge and the administrative penalty;

and

- (4) the right to request a hearing.

(h) Not later than the 20th day after the date on which notice is received, the charged person shall:

(1) remit the amount of the administrative penalty to the commissioner; or

- (2) submit to the commissioner a written request for a hearing.

(i) On request of the charged person or at the discretion of the commissioner, the commissioner shall set a hearing. The hearing shall be conducted in the manner provided for a contested case hearing under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(j) At the close of the hearing, the commissioner shall make findings of fact and conclusions of law and shall issue a written decision. If the commissioner determines that an administrative violation has occurred, the decision shall set forth the amount of the administrative penalty assessed and shall order payment of the administrative penalty.

(k) The findings of fact, the decision, and the order shall be sent immediately to the charged person.

(l) If, without good cause, the charged person fails to respond as required under Subsection (h) of this section, the administrative penalty is due and the commissioner shall initiate enforcement proceedings.

(m) A decision in a hearing under Subsection (j) of this section is subject to judicial review in the manner provided for judicial review under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(n) If an administrative penalty is assessed, the charged person must either:

(1) forward the amount of the administrative penalty to the commissioner for deposit in an escrow account; or

(2) post with the commissioner a bond for the amount of the administrative penalty, to be effective until all judicial review of the violation determination is final.

(o) Failure to comply with Subsection (n) of this section results in a waiver of all legal rights to contest the violation or the amount of the administrative penalty.

(p) If the court determines that the administrative penalty should not have been assessed or should be reduced, the commissioner shall:

(1) remit the appropriate amount, plus accrued interest, if the administrative penalty was paid; or

- (2) release the bond.

The amendment was read and was adopted by a viva voce vote.

Senator Barrientos offered the following amendment to the bill:

Floor Amendment No. 32

Amend C.S.H.B. 2 as follows:

(1) Add the following appropriately numbered sections to Article 11 of the bill:

SECTION __. Section 3(a), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended by amending Subdivisions (2), (4), (5), (11), (16), (17), and (18) and adding Subdivisions (19) through (22) to read as follows:

(2) "Annuitant" shall mean an officer or employee who retires under:

(A) the jurisdiction of the Employees Retirement System of Texas and either receives an annuity or is eligible to receive an annuity, pursuant to Subtitle B, D, or E, Title 8, Government Code [C, E, or H], or Chapter 803, Government Code, that is based on at least 10 years of service credit or eligibility under Section 814.002 or 814.102, Government Code [13, of Title 110B, Revised Statutes];

(B) the jurisdiction of the Teacher Retirement System of Texas and either receives an annuity or is eligible to receive an annuity, pursuant to Subtitle C, Title 8, Government Code, that is based on at least 10 years of service credit [D, Title 110B, Revised Statutes], whose last state employment prior to retirement was as an employee of the Teacher Retirement System of Texas, school districts established within state eleemosynary institutions, the Texas Rehabilitation Commission, the Central Education Agency, [or] the Texas Higher Education Coordinating Board, or an institution of higher education [Texas College and University System]; [or]

(C) the optional retirement program established by Chapter 830, Government Code [36, Title 110B, Revised Statutes], and either receives an annuity or is eligible to receive an annuity under that program, if the person's last state employment before retirement, including employment by a public community/junior college, was as an officer or employee of the Texas Higher Education Coordinating Board or an institution of higher education; or

(D) any other federal or state statutory retirement program to which an institution of higher education has made employer contributions, if the employee has met service requirements, age requirements, and other applicable requirements comparable to the requirements for retirement under the Teacher Retirement System of Texas, based on at least 10 years of service credit, [Texas College and University System], and if the person either:

(i) would have been eligible to retire and receive a service retirement annuity from the Teacher Retirement System of Texas based on at least 10 years of service credit had the person not elected to participate in the optional retirement program; or

(ii) is disabled.

(4) "Department" shall mean commission, board, agency, division, institution of higher education, or department of the State of Texas created as such by the constitution or statutes of this state.

(5)(A) "Employee" shall mean any appointive or elective state officer or employee in the service of the State of Texas, including an employee of an institution of higher education [except employees of any university, senior or community/junior college, or any other agency of higher education within the meaning and jurisdiction of Chapter 61, Title 3, Texas Education Code];

(i) who is retired or retires and is an annuitant under the jurisdiction of the Employees Retirement System of Texas, pursuant to Subtitle B, D, or E [C, E, or H], or Chapter 803 [13], [of] Title 8,

Government Code [110B, Revised Statutes], who is retired or retires and is an annuitant under the jurisdiction of the Teacher Retirement System of Texas, pursuant to Subtitle C [D], Title 8, Government Code [110B, Revised Statutes], whose last employment with the state prior to retirement was as an employee of the Teacher Retirement System of Texas, school districts established within state eleemosynary institutions, the Texas Rehabilitation Commission, the Central Education Agency, [or] the Texas Higher Education Coordinating Board, or an institution of higher education [Texas College and University System], or who is retired or retires and is an annuitant under the optional retirement program established by Chapter 830, Government Code [36, Title 110B, Revised Statutes], if the person's last state employment before retirement, including employment by a public community/junior college, was as an officer or employee of the Texas Higher Education Coordinating Board, or an institution of higher education [Texas College and University System], and if the person either:

(a) would have been eligible to retire and receive a service retirement annuity from the Teacher Retirement System of Texas had the person not elected to participate in the optional retirement program; or

(b) is disabled; [or]

(ii) who receives his compensation for services rendered to the State of Texas on a warrant issued pursuant to a payroll certified by a department or by an elected or duly appointed officer of this state; [or]

(iii) who receives payment for the performance of personal services on a warrant issued pursuant to a payroll certified by a department and drawn by the State Comptroller of Public Accounts upon the State Treasurer against appropriations made by the Texas Legislature from any state funds or against any trust funds held by the State Treasurer or who is paid from funds of an official budget of a state department, rather than from funds of the General Appropriations Act; [or]

(iv) who is appointed, subject to confirmation of the senate, as a member of a board or commission with administrative responsibility over a statutory agency having statewide jurisdiction whose employees are covered by this Act;

(v) who receives compensation for services rendered to an institution of higher education on a warrant or check issued pursuant to a payroll certified by an institution of higher education or by an elected or duly appointed officer of this state, and who is eligible for participation in the Teacher Retirement System of Texas; or

(vi) who receives compensation for services rendered to an institution of higher education as provided by this subdivision but is not permitted to be a member of the Teacher Retirement System of Texas because the person is solely employed by an institution of higher education that as a condition of employment requires the person to be enrolled as a student in an institution of higher education in graduate-level courses and who is employed by the institution at least 20 hours a week.

(B) Persons performing personal services for the State of Texas or for an institution of higher education as independent contractors shall never be considered employees of the state for purposes of this Act.

(11) "Trustee" shall mean the [State] Board of Trustees[-] provided for in [Section 6,] Chapter 815, Government Code [352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes)], to administer the Employees Retirement System of Texas.

(16) "Basic coverage [plan for active full-time employees]" shall mean the programs [program] of group coverages determined by the trustee in which

every full-time employee and every annuitant participates automatically unless participation is specifically waived.

(17) ~~“Basic plan for retired employee annuitants” shall mean the program of group coverages determined by the trustee in which every retired employee annuitant participates automatically unless participation is specifically waived;~~

~~[(+8)] “Cafeteria plan” means a plan as defined and authorized by Section 125, Internal Revenue Code of 1986 (26 U.S.C. Sec. 125).~~

~~(18) “Institution of higher education” means any public community/junior college or senior college or university, or any other agency of higher education within the meaning and jurisdiction of Chapter 61, Education Code, except The University of Texas System and The Texas A&M University System. The term does not include Texas Tech University and the University of Houston System unless either of these entities elects to participate in accordance with Section 3A of this Act.~~

~~(19) “The University of Texas System” means the entities listed or described in Section 65.02, Education Code.~~

~~(20) “The Texas A&M University System” means the entities governed under Chapters 85 through 88, Education Code, and includes the Texas Veterinary Diagnostic Laboratory.~~

~~(21) “Texas Tech University” means Texas Tech University, the Texas Tech University Museum, and the Texas Tech University Health Sciences Center.~~

~~(22) “University of Houston System” means the entities governed under Section 111.20, Education Code.~~

SECTION ____ The Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon’s Texas Insurance Code) is amended by adding Section 3A to read as follows:

Sec. 3A. CERTAIN INSTITUTIONS MAY ELECT TO PARTICIPATE. Texas Tech University, the University of Houston System, or both may participate in the Texas Employees Uniform Group Insurance Benefits Program administered by the Employees Retirement System of Texas under this Act. The university or system must notify the trustee of its election to participate not later than April 1, 1992.

SECTION ____ Section 4B, the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon’s Texas Insurance Code), is amended by adding Subsection (e) to read as follows:

(e) The trustee may delegate the duties of the executive director under this section to another employee of the Employees Retirement System of Texas and may delegate its duties to hear appeals to the executive director.

SECTION ____ Section 18, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon’s Texas Insurance Code), is amended to read as follows:

Sec. 18. GROUP BENEFITS [INSURANCE] ADVISORY COMMITTEE.
 (a) The group benefits advisory committee is composed of 25 voting members as provided by this section. The office of the attorney general, the office of the state treasurer, the office of the comptroller, the Railroad Commission of Texas, and the Department of Agriculture are entitled to be represented by one member each on the committee, who may be appointed by the governing body of the state agency or elected by and from the employees of the agency, as determined by rule by the governing body of the agency. [There is created and established hereby the Group Insurance Advisory Committee, which shall consist of 23 members who shall be active or retired employees of the State of Texas.] One [classified] employee shall be elected [appointed] from each of the remaining seven [+0] largest state agencies

that are governed by appointed officers ~~[or departments]~~ by and from the employees ~~[chief administrative officer]~~ of those agencies ~~[or departments]~~. One nonvoting member shall be the executive director of the Employees Retirement System of Texas. One member shall be an expert in employee benefit issues from the private sector ~~[a classified employee of the governor's office]~~, appointed by the governor. One member shall be an expert in employee benefits issues from the private sector, appointed by the lieutenant governor. One member shall be a retired state employee appointed by the trustee ~~[for a three year term]~~. One member shall be a state employee of a state agency other than one of the seven largest state agencies, appointed by the trustee. Two members shall be employees of institutions of higher education appointed by the Texas Higher Education Coordinating Board. Five members shall be employees of institutions of higher education elected by and from the institutions of higher education, but not more than one employee shall be from any one institution. The remaining members shall be elected by and from the ~~[classified] employees of the other state [departments and] agencies, excluding institutions of higher education,~~ in a manner consonant with the election for membership to the board of the Employees Retirement System of Texas, but not more than one employee shall be from any one agency ~~[or department]~~. The members shall elect a presiding officer from their membership to serve a one-year term.

(b) All members of the committee shall be appointed or elected for three-year terms~~;~~ ~~provided, however, that in the initial appointments and election, the trustee shall designate seven members to serve for one year, seven to serve for two years; and seven to serve for three years. Subsequent appointments or elections shall be for three year terms].~~ During a term of appointment or election, state employee vacancies shall be filled by an employee of the same agency from which the vacancy occurred, being appointed by the trustees for the balance of the vacated term. A vacancy in a position held by a member of the private sector shall be filled by the officer who originally made the appointment to that position.

(c) ~~The group benefits advisory committee [Group Insurance Advisory Committee]~~ shall advise and consult with the trustee on matters concerning all insurance coverages provided under this Act and shall present recommendation to the trustee regarding other existing or proposed state employee benefits, other than retirement benefits. The committee shall cooperate and work with the trustee in coordinating and correlating the administration of the Employees Uniform Group Insurance Program among the various state departments and agencies. The duties of each member of the ~~group benefits advisory committee [Group Insurance Advisory Committee]~~ shall be to secure input from fellow employees and shall be considered additional duties required of the member's ~~[his or her]~~ other state office or employment and all expenses incurred by any such member in performing the ~~member's [his or her] duties as a member of the committee shall be paid from [out of] funds made available for those purposes to the agency or department of which the member [he or she] is an employee or officer.~~

SECTION _____. Section 830.002, Government Code, is amended by adding Subsection (c) to read as follows:

(c) The Texas Higher Education Coordinating Board shall develop policies, practices, and procedures as necessary in accordance with applicable statutes to provide greater uniformity in the administration of the retirement annuity insurance program available to employees of Texas state colleges and universities through the optional retirement program.

SECTION _____. Subchapter A, Chapter 830, Government Code, is amended by adding Section 830.006 to read as follows:

Sec. 830.006. REPORTS FROM INSTITUTIONS. (a) The governing board of each institution of higher education, other than the Texas Higher Education

Coordinating Board, shall annually submit a report to the coordinating board that includes information concerning the number of participants and eligible positions and the amount of contributions.

(b) The governing board of each institution required to file a report under Subsection (a) shall keep records, make certifications, and furnish to the Texas Higher Education Coordinating Board information and reports as required by the coordinating board to enable it to carry out its functions under this subtitle.

(c) The Texas Higher Education Coordinating Board shall prepare the report required by Subsection (a) and shall maintain the information required by Subsection (b) with respect to its own employees.

SECTION ____ Section 2, Texas State College and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 2. PURPOSES. It is hereby declared that the policy and purpose of this Act are:

(a) to provide uniformity in the basic group life, accident, and health insurance coverages for all employees of Texas institutions ~~[state colleges and universities];~~

(b) to enable Texas institutions ~~[state colleges and universities]~~ to attract and retain competent and able employees by providing them with basic life, accident, and health insurance coverages comparable to those commonly provided in private industry and those provided employees of other agencies of the State of Texas and Texas public colleges and universities under the Texas Employees Uniform Group Insurance Benefits Act;

(c) to foster, promote, and encourage employment by and service to the institutions ~~[state colleges and universities]~~ of Texas as a career profession for persons of high standards of competence and ability;

(d) to recognize and protect the investment of the Texas institutions ~~[state colleges and universities]~~ in each employee by promoting and preserving economic security and good health among employees of the Texas institutions ~~[state colleges and universities];~~

(e) to foster and develop high standards of employer-employee relationships between the Texas institutions ~~[state colleges and universities]~~ and their employees; and

(f) to recognize the long and faithful service and dedication of employees of the Texas institutions ~~[state colleges and universities]~~ and to encourage them to remain in service until eligible for retirement by providing health insurance and other group insurance benefits for such employees;

~~(g) to provide for greater uniformity of procedures for administration of retirement annuity insurance programs available to employees of Texas state colleges and universities through the optional retirement programs and tax sheltered annuity programs].~~

SECTION ____ Section 3, Texas State College and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code), as amended by Chapters 1084 and 1180, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

Sec. 3. DEFINITIONS. (a) Unless a different meaning is plainly required by the context, the following words and phrases as used in this Act shall have the following meanings:

(1) "Administering carrier" shall mean any carrier or organization, qualified to do business in Texas, designated by an institution ~~[the administrative council]~~ to administer any services, benefits, insurance coverages, or requirements in accordance with this Act and the council's regulations thereunder.

(2) "Retired employee" shall mean an employee as defined in this Act who retires or has retired under a retirement provision under the jurisdiction of:

(A) the Teacher Retirement System of Texas, pursuant to Subtitle C, Title 8, Government Code [~~Chapter 3, Title 1, Texas Education Code, as amended~~];

(B) the Optional Retirement Program, Chapter 830, Government Code [Articles 51.351 et seq., Texas Education Code, as amended]; provided, however, that the employee has met service requirements, age requirements, and other applicable requirements as may be promulgated by the institution [~~administrative council~~] comparable to the requirements for retirement under the Teacher Retirement System of Texas;

(C) the Employees Retirement System of Texas[; ~~Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), as authorized by Chapter 75, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 6228a-2, Vernon's Texas Civil Statutes)~~];

(D) any other federal or state statutory retirement program to which the institution has made employer contributions; provided, however, that the employee has met service requirements, age requirements, and other applicable requirements as may be promulgated by the institution [~~administrative council~~] comparable to the requirements for retirement under the Teacher Retirement System of Texas.

(3) "Carrier" shall mean a qualified carrier as defined in this Act.

(4)(A) "Employee" shall mean any person employed by a governing board of an institution [~~a state university, senior or community/junior college, or any other agency of higher education within the meaning and jurisdiction of Chapter 61, Title 3, Texas Education Code~~];

(i) who retires under the provisions cited in Subsection (a)(2) of this section;

(ii) who receives his compensation for services rendered to an institution [~~a public community/junior college or a senior college, university, or other agency of education within the meaning and jurisdiction of Chapter 61, Title 3, Texas Education Code;~~] on a warrant or check issued pursuant to a payroll certified by an institution or by an elected or duly appointed officer of this state, and who is eligible for participation in the Teacher Retirement System of Texas;

(iii) who receives his compensation for services rendered as provided in this subdivision but is not permitted to be a member of the Teacher Retirement System of Texas because he is solely employed by an institution of higher education that as a condition of employment requires the employee to be enrolled as a student in the institution in graduate-level courses and who is employed at least 20 hours a week.

(B) Persons performing personal services for such institutions [~~public community/junior colleges or senior colleges, universities, or other agencies of higher education within the meaning and jurisdiction of Chapter 61, Title 3, Texas Education Code;~~] as independent contractors shall never be considered employees for purposes of this Act.

(5) "Employer" shall mean the institutions defined elsewhere in Subsection (8) of this section.

(6) "Group life, accident, or health insurance plan" shall mean any group insurance policy or contract, life, accident, medical, dental, or hospital service agreement, membership or subscription contract, or similar group arrangement provided by an administering carrier.

(7) [~~"Retirement annuity insurance" shall mean policies or contracts provided by an administering carrier or carriers to provide optional retirement~~]

and/or tax-sheltered annuity benefits as authorized by applicable state and federal statutes.

[(8)] “Institution” shall mean The University of Texas System, The Texas A&M University System, Texas Tech University, and the University of Houston System, except that an institution that elects to participate in the Employees Uniform Group Insurance Program under Section 3A of the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon’s Texas Insurance Code) on or before April 1, 1992, may not participate in the Texas State College and University Employees Uniform Insurance Benefits Program after coverage has begun under the Employees Uniform Group Insurance Program [each association of one or more public community/junior colleges or senior colleges or universities, medical or dental units, technical institutes, or other agencies of higher education under the policy direction of a single governing board].

(8) [(9)] “Dependent” shall mean the spouse, as defined in the Texas Family Code, of an employee or retired employee, and an unmarried child under 25 years of age including: (A) an adopted child, (B) a stepchild, foster child, or other child who is in a regular parent-child relationship, (C) any such child, regardless of age, who lives with or whose care is provided by an employee or retired employee on a regular basis, if such child is mentally retarded or physically incapacitated to such an extent as to be dependent upon the employee or retired employee for care or support, as the institution [administrative council] shall determine.

(9) [(10)] “President” shall mean the duly authorized chief official of any institution covered under the provisions of this Act or such other official as may be designated by a governing board to carry out the provisions of this Act.

(10) [(11)] “Qualified carrier” shall mean:

(A) any insurance company authorized to do business in this state by the State Board of Insurance to provide any of the types of insurance coverages, benefits, or services provided for in this Act under any of the insurance laws of the State of Texas, which has an adequate surplus, a successful operating history, and which has had successful experience in providing and servicing any of the types of group coverage provided for in this Act as determined by the State Board of Insurance;

(B) any corporation operating under Chapter 20 of the Texas Insurance Code which provides any of the types of coverage, benefits, or services provided for in this Act, which has a successful operating history, and which has had successful experience in providing and servicing any of the types of group coverage provided for in this Act as determined by the State Board of Insurance; or

(C) any combination of carriers as herein defined, upon such terms and conditions as may be prescribed by the institution [administrative council]; provided, however, that for purposes of this Act carriers combining for the purpose of bidding and/or underwriting this program shall not be considered in violation of Sections 15.01 through 15.34, Chapter 15, Title 2, Competition and Trade Practices, Texas Business & Commerce Code.

(11) [(12)] “Service” shall mean any personal services of any employee creditable in accordance with rules and regulations promulgated by the institution [administrative council].

(12) [(13)] “Active employee plan” shall mean a plan or program of group life, accident, or health insurance for active employees as determined by the institution [administrative council] as provided in this Act.

(13) [(14)] “Retired employee plan” shall mean a plan or program of group insurance as determined by the institution [administrative council] as defined in this Act for all retired employees as defined in this Act.

(14) ~~[(15)]~~ "Cafeteria plan" means a plan as defined and authorized by Section 125, Internal Revenue Code of 1986 (26 U.S.C. Sec. 125).

(15) "The University of Texas System" means the entities listed or described in Section 65.02, Education Code.

(16) "The Texas A&M University System" means the entities governed under Chapters 85 through 88, Education Code, and includes the Texas Veterinary Diagnostic Laboratory.

(17) "Texas Tech University" means Texas Tech University, the Texas Tech University Museum, and the Texas Tech University Health Sciences Center.

(18) "University of Houston System" means the entities governed under Section 111.20, Education Code.

(b) In addition to the foregoing definitions, the institution [administrative council] shall have authority to define by rule any words and terms necessary in the administration of this Act.

(c) Notwithstanding Subsection (a)(2) of this section, a person who, before September 1, 1991, retired under Subtitle C, Title 8, Government Code, with at least five but less than 10 years of service is a retired employee for purposes of this Act.

SECTION _____. Section 4, Texas State College and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code), is amended to read as follows:

Sec. 4. AUTHORITY. (a) A Texas State College and University Employees Uniform Insurance Benefits Program is hereby created. Each institution shall implement the program for the benefit of its employees. ~~[The uniform insurance benefits program shall be established within the authority of the Coordinating Board, Texas College and University System. The commissioner of higher education, acting under the direction and established policies of the coordinating board, shall appoint a coordinating board staff member who shall serve as executive secretary for the program, and shall provide from appropriated funds such additional staff and other resources necessary to provide technical consulting and administrative and clerical support for the effective administration of this Act by the administrative council and the advisory committee as hereinafter provided.]~~

(b) Each institution ~~[The administrative council shall be selected, serve, and perform duties as hereinafter described:~~

~~[(1) Selection. (A) Acting as a group, the presidents of the three senior level institutions having the highest number of employees as defined in this Act, based on the most current statistical reports of the Texas Higher Education Coordinating Board, shall with prior consultation with all other presidents of all senior level institutions covered by this Act designate two representatives to serve as members of the council who are employees as defined in this Act of any of the senior level institutions.~~

~~[(B) Acting as a group, the presidents of the three junior level institutions or technical institutions having the highest number of employees as defined in this Act, based on the most current statistical reports of the Texas Higher Education Coordinating Board, shall with prior consultation with all other presidents of all junior level institutions covered by this Act designate two representatives to serve as members of the council who are employees as defined in this Act of any of the junior level institutions or technical institutions.~~

~~[(C) The administrative council's advisory committee shall select two persons to serve as members of the council who are employees as defined in this Act of institutions of higher education.~~

~~[(D) The governor shall appoint three persons to serve as members of the council who are knowledgeable about the actuarial principles necessary to analyze higher education insurance plans. A person appointed by the~~

governor under this paragraph is not required to be an employee as defined in this Act.

~~[(2) Qualifications of members. The persons designated as members of the administrative council must have demonstrable qualifications for the administration of the program established by this Act.~~

~~[(3) Terms of membership. (A) All appointments shall serve for a period of six years each except for appointments to fill vacancies occurring in cases of incompleting terms, in which case the appointment shall be for the remainder of the unexpired term.~~

~~[(B) The members thus appointed shall annually elect a chairman and other such officers as may be necessary.~~

~~[(4) Duties. The administrative council] shall:~~

~~(1)[(A)] determine basic coverage standards which shall be comparable to those commonly provided in private industry and those provided employees of other agencies and institutions of higher education of the State of Texas under the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code). The institution[, after considering recommendations of the advisory committee. In determining these standards, the council] may [provide reasonable flexibility for institutions to] design a plan around existing local conditions.~~

~~(2)[(B)] require each institution to] include in its respective bid documents for the various coverages a provision calling for each bidder to identify its administrative cost as a distinguishable figure and to enumerate what services the bidder will render in exchange for the administrative costs so identified.~~

~~(3)[(C)] determine basic procedural and administrative practices for insurance coverages to be provided employees covered under the provisions of this Act [, after considering recommendations of the advisory committee].~~

~~(4) Submit its program, including any agreement under which a firm is engaged to administer a self-insured program, to [(D)] determine if existing institutional programs meet, equate to, or exceed standards for such basic coverages. If so, such programs may be continued in accordance with existing contractual arrangements between those institutions and their carrier or carriers, provided, however, that each program so continued shall be submitted by the institution for] competitive bidding [within standards established by the administrative council] at least once every six years. It is further provided that:~~

~~(A)[(i)] The State Board of Insurance shall provide, by request of the institution, a list of all carriers authorized to do business in the State of Texas and who will be eligible to bid on the insurance coverage or coverages provided in this Act.~~

~~(B)[(ii)] The State Board of Insurance shall, upon request by the institution, examine and evaluate the bidding contracts and certify their actuarial soundness to the institution within 15 days from the date of request.~~

~~(C)[(iii)] The institution is not required to select the lowest bid, but shall take into consideration other factors such as ability to service contracts, past experience, financial stability, and other relevant criteria. Should the institution select a carrier whose bid differs from that advertised, [such deviation shall be reported to the administrative council and] the reasons for such deviation shall be fully justified and recorded in the minutes of the next meeting of the governing board of the institution [administrative council].~~

~~(D)[(iv)] The institution shall select and contract for services performed by health maintenance organizations that are approved by the federal government, if available, or by the State of Texas, if available, to offer health-care services to eligible employees and retired persons in a specific area of the state. Eligible employees and retired persons may participate in a selected health~~

maintenance organization in lieu of participation in the health insurance benefits under this Act, and the employer contributions provided by Section 13 of this Act for health-care coverage shall be paid to the selected health maintenance organizations on behalf of the participants. A health maintenance organization that has been approved to provide health-care services to employees and retired persons of the state under the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code) is qualified upon proper application to the institution to provide similar services to eligible employees and retired persons of any institution or agency under this Act located in the same area of the state. More stringent requirements may not be imposed on health maintenance organizations under this Act than are imposed by the state or by the federal government.

~~[(E) provide that the governing boards of two or more institutions of higher education may procure one or more group contracts with any insurance company or companies authorized to do business in this state, insuring the employees of each participating institution. The purpose of such authorization shall be to provide institutions of higher education with the ability to obtain the benefits of the economy and/or improved coverages for their employees which may occur through increased purchasing economics for larger groups of employees. All contracts for basic coverages negotiated from the effective date of this Act shall be in compliance with basic coverage standards, rules, and regulations of the administrative council promulgated pursuant to this Act. Each governing board may provide such additional or optional insurance programs and coverages as it deems desirable for its employees.]~~

~~(5)[(F)]~~ adopt rules and regulations consistent with the provisions of this Act and its purpose as it deems necessary to carry out the statutory responsibilities.

~~(6) establish procedures~~~~[(G) require that procedures be established by each institution]~~ to allow each covered employee to obtain prompt action regarding claims pertaining to insurance provided under this Act.

~~[(H) publish such additional goals, guidelines, and surveys as are necessary to assist covered institutions in providing their employees with effective benefits programs.~~

~~[(I) develop policies, practices, and procedures as necessary in accordance with provisions of applicable statutes to provide for greater uniformity in the administration of retirement annuity insurance programs available to employees of Texas state colleges and universities through the Optional Retirement Program, Chapter 830, Government Code, and tax sheltered annuity programs as provided in Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962, as amended (Article 6228a-5, Vernon's Texas Civil Statutes).~~

~~[(J) establish rules, regulations, and procedures for preparation and review of the annual reports of the institutions as further provided for under Section 6 of the Act.]~~

(c) ~~An~~ ~~[The]~~ advisory committee for each institution shall be selected, serve, and perform duties as hereinafter described:

(1) Selection. One member of the advisory committee shall be elected from each of the ~~[institutional]~~ components, units, or agencies of the institution ~~[under the policy direction of a single governing board]~~ at such times as designated by the institution ~~[administrative council]~~ and in accordance with general guidelines for such elections provided by the institution ~~[administrative council]~~.

(2) Qualifications of members. The members of the advisory committee shall be chosen from among employees as defined in this Act. The persons so elected shall demonstrate mature judgement, special abilities, and sincere interests in employee insurance programs and be able to represent the needs of all

employees of the component, unit, or agency [institution] represented with regard to advisory committee actions.

(3) Terms of membership. Members of the advisory committee elected under the terms of this Act shall serve for a period of two years, subject to reelection. At the initial meeting of the advisory committee, and subsequently each year, the members who are elected shall elect a chairman and other such officers as may be necessary. A vacancy shall be filled by an employee of the same component, unit, or agency [institution] from which the vacancy occurred, being appointed by the chief executive officer of the component, unit, or agency [~~president of said institution~~] for the balance of the vacated term.

(4) Duties. (A) The advisory committee shall cooperate and work with the governing board of the institution [~~administrative council~~] in coordinating and correlating the administration of the group insurance program among the various components, units, and agencies [institutions]. Members of the advisory committee shall cooperate and work with the governing board of the institution [~~administrative council~~] as advisors in development, implementation, coordination, and administration of the group insurance programs among the various components, units, and agencies [institutions].

(B) The advisory committee shall provide a channel for open communication of ideas and suggestions regarding coverages, eligibility, claims, procedures, bidding, administration, and all other aspects of employee insurance benefits.

(d) Notwithstanding any other provisions of this Act, the governing boards providing programs of benefits under this Act are authorized to self-insure the programs and may, at their discretion, engage a firm to administer the program.

(e) [~~The administrative council may adopt basic guidelines within statutory authority granted under this Act for developing and implementing cafeteria plans at each of the institutions covered by this Act.~~] The governing board of each institution providing benefits under this Act may study the feasibility of establishing a cafeteria plan and may design, develop, adopt, implement, and administer a cafeteria plan if the governing board determines that the establishment of a cafeteria plan is feasible, would be beneficial to the institution and to employees who would be eligible to participate in the cafeteria plan, and would not adversely affect the insurance program established under this Act. The governing board may include in a cafeteria plan any benefit that may be included in a cafeteria plan under federal law. In addition to other authority granted to a governing board by this Act, the governing board may cooperate and work with and may enter into necessary contracts and agreements with one or more independent and qualified agencies, persons, or entities to design, develop, adopt, implement, or administer or to assist in the design, development, adoption, implementation, or administration of a cafeteria plan under this Act. A cafeteria plan may be designed, developed, adopted, implemented, and administered by or on behalf of an institution [~~in accordance with the basic guidelines adopted by the administrative council~~]. If the governing board determines that a cafeteria plan adopted under this subsection is no longer advantageous to the institution and its employees, the governing board may adopt an order terminating the cafeteria plan and providing a procedure for the orderly withdrawal of the institution and its employees from that plan. [~~On issuing a termination order under this subsection, the governing board of the institution shall submit a written report to the administrative council stating the reasons for the termination and outlining the procedures for withdrawal from the plan.~~]

(f) An institution may join with another institution to procure one or more group contracts with any insurance company authorized to do business in this state, insuring the employees of each participating institution. The purpose of this authorization is to provide institutions of higher education with the ability to obtain

the benefits of economy and improved coverages for their employees which may occur through increased purchasing economies for larger groups of employees.

SECTION ____ Section 4A, Texas State College and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code), as added by Chapter 1041, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

Sec. 4A. EXCLUDING OR LIMITING CERTAIN COVERAGES PROHIBITED. ~~An institution [The administrative council shall include in its basic coverage standards a standard that prohibits an institution],~~ in contracting for group insurance or health maintenance organization coverage or in self-insuring its own coverage, may not contract for or provide ~~[from contracting for or providing]~~ in that coverage an exclusion or limitation on coverage or services for acquired immune deficiency syndrome, as defined by the Centers for Disease Control of the United States Public Health Service, or human immunodeficiency virus infection.

SECTION ____ Sections 5, 7, 8, 13, 14, 15, 15A, 16, and 17, Texas State College and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code), are amended to read as follows:

Sec. 5. BENEFIT CERTIFICATES. Each institution ~~[The administrative council]~~ shall assure that each employee insured under this Act is issued a certificate of insurance setting forth the benefits to which the employee is entitled, to whom the benefits are payable, to whom the claims shall be submitted, and summarizing the provisions of the policy principally affecting the employee.

Sec. 7. REINSURANCE. ~~[(a)]~~ The institutions may arrange with any administering carrier or carriers issuing any policy or policies under this Act for the reinsurance of portions of the total amount of insurance under such policy or policies with other qualified carriers which elect to participate in the reinsurance.

~~[(b)] The administrative council may determine all rules, regulations, and actions necessary for the providing of such reinsurance through qualified carriers.]~~

Sec. 8. ANNUAL ACCOUNTING. (a) Carriers providing any policy purchased under this Act shall provide an accounting to the institution not later than 120 days after the end of each policy year. The accounting for each line of coverage shall set forth, in a form acceptable to the institution ~~[administrative council]~~:

(1) the cumulative amount of premiums actually remitted to the carrier under the policy from its date of issue to the end of the policy year, the amount of premiums actually remitted under the policy for each year from the anniversary date to the end of that policy year;

(2) the total of all mortality and other claims, charges, losses, costs, contingency reserve for pending and unreported claims and expenses incurred for each of the periods corresponding to each of the periods heretofore described in Subsection (a) (1) of this section;

(3) the amounts of the allowance for a reasonable profit, contingency reserves, and all other administrative charges corresponding to each of the periods as heretofore described in Subsection (a) (1) of this section.

(b) Any excess of the total of Subsection (a) (1) of this section over the corresponding sum of Subsections (a) (2) and (a) (3) of this section may be held by the carrier issuing the policy as a special reserve. Such reserve may be used at the discretion of the institution ~~[with prior approval of the administrative council]~~ for, but not limited to, providing additional coverage for participating employees, offsetting necessary employee premium rate increases, or to reduce participating employee premium contributions to the coverage. Any reserve held by the carrier would bear interest at a rate determined each policy year by the carrier and approved by the institution as being consistent with the rate generally used by the carrier for similar funds held under other group insurance policies. ~~[Alternative~~

report requirements or arrangements may be approved by the administrative council.]

Sec. 13. EMPLOYER CONTRIBUTIONS. Certification shall be submitted on or before the first day of November next preceding each regular session of the legislature; the institutions and agencies covered under the provisions of this Act shall certify to the Legislative Budget Board and budget division of the Governor's Budget and Planning Office the amount necessary to pay employer contributions for each active and retired employee from the effective date of this Act. The Legislative Budget Board and the Governor's Budget and Planning Office will establish procedures to insure that eligible institutions request appropriate funds to support this program and shall present appropriate budget recommendations to the legislature. The Teacher Retirement System of Texas, Optional Retirement Program carriers, and Employees Retirement System of Texas shall furnish each institution such information as may be deemed necessary by the institution [administrative council] to provide retired employees with the coverages and employer contributions provided under the Act.

Sec. 14. ADMINISTRATIVE COSTS. No employee covered under the provisions of this Act shall be required to pay out of the amount of employer contributions due him or out of the amount of his additional premiums due for selected coverages, any administrative costs, fees, or tax whatsoever to pay expenses of a state institution [~~the coordinating board;~~] or committees as herein established for administering this Act. The duties of each member of the [administrative council and the] advisory committees [committee] shall be considered additional duties to those required of his other state office or employment, and all expenses incurred by any such member in performing his duties as a member of the [council or] committee shall be paid out of funds made available for those purposes to the institution of which the member [he] is an employee or officer.

Sec. 15. [~~STUDIES;~~] REPORTS, RECORDS, AND AUDITS. [(a) The administrative council shall cause to be established a continuing study of the operation and administration of this Act, including surveys and reports on group insurance coverages and benefits.

[(b)] Each contract entered into under this Act shall contain provisions requiring administering carriers to

(1) furnish such reasonable reports as the institution [administrative council] determines to be necessary to enable it to carry out its functions under this Act; and

(2) permit the institution [administrative council] and representatives of the state auditor to examine records of the carriers as may be necessary to carry out the purpose of this Act.

[(c) Each institution shall keep such records, make such certifications, and furnish the administrative council with such information and reports as may be necessary to enable the administrative council to carry out its functions under this Act.]

Sec. 15A. AUDITS [~~REPORTING TO AUDITOR OF INAPPROPRIATE USE OF FUNDS~~]. [(a)] The state auditor shall conduct periodic audits of each institution's insurance program to verify that each person enrolled in the insurance program is eligible for the program benefits.

[(b) The executive secretary shall notify the state auditor if the executive secretary becomes aware of any inappropriate expenditure of insurance program funds.]

Sec. 16. APPLICABILITY OF STATE OPEN-MEETINGS AND OPEN-RECORDS STATUTES AND FEDERAL AND STATE PRIVACY STATUTES. Any reports which shall be required by action of an institution or an [the administrative council and] advisory committee that has [which have] been

established under the Act shall be a matter of open record, available for review under the provisions of applicable open-record statutes of the State of Texas. This shall not be interpreted to require the release of any records pertaining to individuals insured under the provisions of this Act, the release of which would be in conflict with the rights of these individuals under federal and state privacy statutes. Meetings which are necessary for the administration of the Act shall be subject to applicable provisions of state open-meetings statutes.

Sec. 17. **COVERAGE FOR DEPENDENTS.** Any employee or retired employee shall be entitled to secure for his dependents any uniform group insurance coverages provided for such dependents under the rules and regulations to be promulgated by each institution ~~[the administrative council]~~. Premium payments required of the employee or retired employee in excess of employer contributions shall be deducted from the monthly pay of the employee, or the employee's monthly pay shall be reduced in the appropriate amount, or paid in such manner and form as the institution ~~[administrative council]~~ shall determine.

SECTION ____. (a) Section 4A, Texas State College and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code), as added by Chapter 1084, Acts of the 71st Legislature, Regular Session, 1989, is repealed.

(b) Sections 4B and 6, Texas State College and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code), are repealed.

(c) Section 11A, Texas State College and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code), as added by Chapter 1180, Acts of the 71st Legislature, Regular Session, 1989, and Section 11A, Texas State College and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code), as added by Chapter 1084, Acts of the 71st Legislature, Regular Session, 1989, are repealed.

(2) Add the following appropriately numbered sections to Article 13 of the bill:

SECTION ____. (a) A person who is serving on the Group Insurance Advisory Committee on the effective date of this Act shall serve as a member of the group benefits advisory committee until November 1, 1992, on which date all terms of members of the committee expire.

(b) Each official or state agency required by Section 18, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), as amended by Section 4 of this Act, to appoint or elect a member of the group benefits advisory committee shall select the member before November 1, 1992, for a term beginning on that date.

(c) The newly appointed or elected members of the group benefits advisory committee shall meet and determine by lot which eight members serve terms expiring August 31, 1993, which eight members serve terms expiring August 31, 1994, and which nine members serve terms expiring August 31, 1995.

(d) Until all members have taken office, a quorum of the group benefits advisory committee is a majority of the number of voting members who are qualified.

SECTION ____. (a) The employees of an institution of higher education may not be covered under the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), as amended by this Act, before September 1, 1992.

(b) All institutions of higher education covered by the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), as amended by this Act, including Texas Tech University and the University of Houston System, if those entities elect to participate in accordance with Section 3A, Texas Employees Uniform Group Insurance Benefits Act

(Article 3.50-2, Vernon's Texas Insurance Code), as added by this Act, must be covered by the Texas Employees Uniform Group Insurance Benefits Program on or before January 1, 1993.

(c) An institution of higher education covered by the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), as amended by this Act, including Texas Tech University and the University of Houston System, if those entities elect to participate in accordance with Section 3A, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), may not continue or initiate employee insurance plans and policies with state financial participation after the employees of the institution are covered under the Texas Employees Uniform Group Insurance Benefits Program.

(3) Renumber subsequent sections accordingly.

The amendment was read and was adopted by a viva voce vote.

Senator Green offered the following amendment to the bill:

Floor Amendment No. 33

Amend C.S.H.B. 2 as follows:

[1] Add SECTION 11.90 and SECTION 11.91 to read as follows:

SECTION 11.90. Sections 1, 2 and 3, Article 21.52, Insurance Code, are amended to read as follows:

Sec. 1. DEFINITIONS. As used in this article:

(a) "health insurance policy" means any individual, group, blanket, or franchise insurance policy, insurance agreement, or group hospital service contract, providing benefits for medical or surgical expenses incurred as a result of an accident or sickness;

(b) "doctor of podiatric medicine" includes D.P.M., podiatrist, doctor of surgical chiropody, D.S.C. and chiropodist;

(c) "doctor of optometry" includes optometrist, doctor of optometry, and O.D.;

(d) "doctor of chiropractic" means a person who is licensed by the Texas Board of Chiropractic Examiners to practice chiropractic;

(e) "licensed dentist" means a person who is licensed to practice dentistry by the State Board of Dental Examiners;

(f) "audiologist" means a person who has received a master's or doctorate degree in audiology from an accredited college or university and is certified by the American Speech-language and Hearing Association;

(g) "speech-language pathologist" means a person who has received a master's or doctorate degree in speech-language pathology from an accredited college or university and is certified by the American Speech-language and Hearing Association to restore speech loss or correct a speech impairment;

(h) "certified social worker—advanced clinical practitioner" means a person who is certified by the Texas Department of Human Services as a certified social worker with the order of recognition of advanced clinical practitioner;

(i) "licensed dietitian" means a person who is licensed by the Texas State Board of Examiners of Dietitians; ~~and~~

(j) "licensed professional counselor" means a person who is licensed by the Texas State Board of Examiners of Professional Counselors; ~~and~~

(k) "psychologist" means a person licensed to practice psychology by the Texas State Board of Examiners of Psychologists.

Sec. 2. This article applies to and embraces all insurance companies, associations, and organizations, whether incorporated or not, which provide health benefits, accident benefits, or health and accident benefits for medical or surgical

expenses incurred as a result of an accident or sickness. Without limiting the foregoing, this article specifically applies to the insurance companies, associations, and organizations which come within the purview of the following designated chapters of the Insurance Code: Chapter 3, pertaining to life, health and accident insurance companies; Chapter 8, pertaining to general casualty companies; Chapter 10, pertaining to fraternal benefit societies; Chapter 11, pertaining to mutual life insurance companies; Chapter 12, pertaining to local mutual aid associations; Chapters 13 and 14, pertaining to statewide mutual assessment companies, mutual assessment companies, and mutual assessment life, health and accident associations; Chapter 15, pertaining to mutual insurance companies writing other than life insurance; Chapter 18, pertaining to underwriters making insurance on the Lloyd's plan; Chapter 19, pertaining to reciprocal exchanges; and Chapter 22, pertaining to stipulated premium insurance companies. ~~[This article also applies to health maintenance organizations established pursuant to Chapter 214, Acts of the 64th Legislature, Regular Session, 1975, hereafter amended.]~~

Sec. 3. SELECTION OF PRACTITIONERS. Any person who is issued, who is a party to, or who is a beneficiary under any health insurance policy delivered, renewed, or issued for delivery in this state by any insurance company, association, or organization to which this article applies may select a licensed doctor of podiatric medicine, a licensed dentist, or a doctor of chiropractic to perform the medical or surgical services or procedures scheduled in the policy which fall within the scope of the license of that practitioner, a licensed doctor of optometry to perform the services or procedures scheduled in the policy which fall within the scope of the license of that doctor of optometry, an audiologist to measure hearing for the purpose of determining the presence or extent of a hearing loss and to provide aural rehabilitation services to a person with a hearing loss if those services or procedures are scheduled in the policy, a speech-language pathologist to evaluate speech and language and to provide habilitative and rehabilitative services to restore speech or language loss or to correct a speech or language impairment if those services or procedures are scheduled in the policy, a certified social worker—advanced clinical practitioner to provide the services that fall within the scope of the license of such certified practitioner and which are specified as services within the terms of the policy of insurance, including the provision of direct, diagnostic, preventive, or clinical services to individuals, families, and groups whose functioning is threatened or affected by social or psychological stress or health impairment, if those services or procedures are scheduled in the policy, a licensed dietitian including a provisional licensed dietitian under a licensed dietitian's supervision to provide the services that fall within the scope of the license of that dietitian if those services are scheduled in the policy, [or] a licensed professional counselor to provide the services that fall within the scope of the license of that professional if those services are scheduled in the policy, or a psychologist to perform the services or procedures scheduled in the policy that fall within the scope of the license of that psychologist. The services of a certified social worker—advanced clinical practitioner or licensed professional counselor that are included in this Act may require a professional recommendation by a doctor of medicine or doctor of osteopathy unless the health insurance policy terms do not require such a recommendation. The payment or reimbursement by the insurance company, association, or organization for those services or procedures in accordance with the payment schedule or the payment provisions in the policy shall not be denied because the same were performed by a licensed doctor of podiatric medicine, a licensed doctor of optometry, a licensed doctor of chiropractic, a licensed dentist, an audiologist, a speech-language pathologist, a certified social worker—advanced clinical practitioner, a licensed dietitian, [or] a licensed professional counselor, or a psychologist. There shall not be any classification,

differentiation, or other discrimination in the payment schedule or the payment provisions in a health insurance policy, nor in the amount or manner of payment or reimbursement thereunder, between scheduled services or procedures when performed by a doctor of podiatric medicine, a doctor of optometry, a doctor of chiropractic, a licensed dentist, an audiologist, a speech-language pathologist, a certified social worker—advanced clinical practitioner, a licensed dietitian, [or] a licensed professional counselor, or a psychologist which fall within the scope of his license or certification and the same services or procedures when performed by another practitioner of the healing arts whose services or procedures are covered by the policy. Any provision in a health insurance policy contrary to or in conflict with the provisions of this article shall, to the extent of the conflict, be void, but such invalidity shall not affect the validity of the other provisions of this policy. Any presently approved policy form containing any provision in conflict with the requirements of this Act shall be brought into compliance with this act by the use of riders and endorsements which have been approved by the State Board of Insurance or by the filing of new or revised policy forms for approval by the State Board of Insurance.

SECTION 11.91. Article 21.35A, Insurance Code, is repealed.

[2] Add a new SECTION 13.33 immediately after SECTION 13.32 to read as follows and renumber the succeeding SECTIONS in consecutive numerical sequence:

SECTION 13.33. The change in law made by this Act to Sections 1, 2 and 3, Article 21.52, Insurance Code, takes effect September 1, 1991, and applies to a health insurance policy delivered, issued for delivery, or renewed on or after January 1, 1992. A health insurance policy delivered, issued for delivery, or renewed before January 1, 1992, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

The amendment was read and was adopted by a viva voce vote.

Senator Green offered the following amendment to the bill:

Floor Amendment No. 34

Amend C.S.H.B. 2 as follows:

Add the following appropriately numbered section and renumber subsequent sections accordingly:

SECTION _____. Chapter 5, Insurance Code, is amended by adding Article 5.01-2 to read as follows:

Art. 5.01-2. PROHIBITED CONDITIONS. An insurer delivering or issuing for delivery in this state insurance policies subject to Article 5.01-1 of this code covering passenger cars or light trucks may not refuse to issue, refuse to renew, or cancel a passenger car or light truck insurance policy for an applicant or an insured because of the age, sex, marital status, race, national origin, physical handicap, or place of residence of the applicant or insured.

The amendment was read.

On motion of Senator Green and by unanimous consent, the amendment was withdrawn.

Senator Green offered the following amendment to the bill:

Floor Amendment No. 35

Amend C.S.H.B. 2 as follows:

Add the following appropriately numbered section and renumber subsequent sections accordingly:

SECTION____. Chapter 21, Insurance Code, is amended by adding Article 21.02-2 to read as follows:

Art. 21.02-2. PROHIBITION ON CANCELLATION OF INSURANCE AGENCY CONTRACTS. (a) An insurer may not cancel a written agreement with an agent or reduce or restrict an agent's underwriting authority with respect to property or casualty insurance based solely on the loss ratio experience on that agent's book of business if:

(1) the insurer required the agent to submit for underwriting approval the application for insurance which resulted in a claim or claims which caused the loss ratio experience to be unacceptable;

(2) all material information on the application was fully completed;
and

(3) the agent did not omit or alter any information provided by the applicant.

(b) An insurer who cancels an agent's contract or reduces or restricts an agent's underwriting authority in contravention of Subsection (a) of this article is liable to the agent for either three times the commissions earned by the agent in the 12 months immediately preceding the cancellation, reduction, or restriction or the renewal commissions from the policies handled by the agent policyholders retain those policies with the insurer, at the election of the agent.

(c) For purposes of this article, "loss ratio experience" means premiums paid during the two years immediately preceding the cancellation, reduction, or restriction divided by claims paid during that period.

The amendment was read and failed of adoption by the following vote: Yeas 11, Nays 13, Present-not voting 1.

Yeas: Barrientos, Brooks, Ellis, Green, Haley, Johnson, Lyon, Rosson, Tejeda, Whitmire, Zaffirini.

Nays: Armbrister, Brown, Harris of Tarrant, Harris of Dallas, Henderson, Krier, Leedom, Lucio, Montford, Parker, Sibley, Sims, Truan.

Present-not voting: Glasgow.

Absent: Bivins, Carriker, Dickson, Moncrief, Ratliff, Turner.

Senator Haley offered the following amendment to the bill:

Floor Amendment No. 36

Amend C.S.H.B. 2 as follows:

Strike SECTION 11.45, on page 394, lines 22-25 and on page 395, line 1, and renumber remaining sections accordingly.

The amendment was read and was adopted by a viva voce vote.

RECORD OF VOTE

Senator Parker asked to be recorded as voting "Present-not voting" on the adoption of the amendment.

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 37

Amend C.S.H.B. 2 by adding a new SECTION 2.17A to follow SECTION 2.17 to read as follows:

SECTION 2.17A. Section 4A, Article 5.15-1, Insurance Code, is amended to read as follows:

“Sec. 4A. Notwithstanding any other provision of this article, Section (g)(~~th~~), Article 5.15, of this code applies to professional liability insurance for health care providers and physicians, and if there is a conflict between this article and Section (g)(~~th~~), Article 5.15, of this code, Section (g)(~~th~~) prevails.”

The amendment was read and was adopted by a viva voce vote.

Floor Amendment No. 38 was not offered.

Senator Dickson offered the following amendment to the bill:

Floor Amendment No. 39

Amend C.S.H.B. 2, beginning on page 109, line 4, by deleting Sections 2.45, 2.46, and 2.47.

The amendment was read and failed of adoption by the following vote: Yeas 13, Nays 15.

Yeas: Barrientos, Dickson, Haley, Johnson, Krier, Lucio, Montford, Ratliff, Rosson, Sims, Tejeda, Turner, Zaffirini.

Nays: Armbrister, Brooks, Brown, Ellis, Green, Harris of Tarrant, Harris of Dallas, Henderson, Leedom, Lyon, Moncrief, Parker, Sibley, Truan, Whitmire.

Absent: Bivins, Carriker, Glasgow.

Senator Turner offered the following amendment to the bill:

Floor Amendment No. 40

Amend C.S.H.B. 2 at page 174, by inserting the following between lines 5 and 6:

(d) This article does not apply to the provision of health care services to medically indigent persons who qualify for sliding fee scales.

The amendment was read.

On motion of Senator Turner and by unanimous consent, the amendment was withdrawn.

Floor Amendment No. 41 was not offered.

Senator Montford offered the following amendment to the bill:

Floor Amendment No. 42

Amend C.S.H.B. 2 as follows:

(1) On page 16, strike lines 12 and 13 and substitute the following:

“(1) an applicant for any license, permit, certificate of authority, certificate of registration, or other authorization issued by the board to engage in an activity regulated under this code; or”

(2) On page 17, lines 5 and 6, strike “a license as an insurance agent” and substitute “any license, permit, certificate of authority, certificate of registration, or other authorization issued by the board to engage in an activity regulated under this code”

The amendment was read and was adopted by a viva voce vote.

Senator Harris of Tarrant offered the following amendment to the bill:

Floor Amendment No. 43

Amend C.S.H.B. 2 as follows:

(1) On page 313, lines 20 and 21 strike "in the allocation of health care resources and services" and insert "of health care services";

(2) On page 325, line 8, strike "of the allocation of health care resources and services" and insert "of health care services";

The amendment was read and was adopted by a viva voce vote.

Floor Amendment No. 44 was not offered.

Senator Brooks offered the following amendment to the bill:

Floor Amendment No. 45

Amend C.S.H.B. 2 at page 174, by inserting the following between lines 5 and 6:

(d) This article does not apply to the provision of health care services to Medicaid or Medicare patients or to medically indigent persons who qualify for sliding fee scales.

BROOKS
TURNER

The amendment was read and was adopted by a viva voce vote.

**VOTE BY WHICH FLOOR AMENDMENT NO. 35
FAILED OF ADOPTION RECONSIDERED**

Senator Truan moved to reconsider the vote by which Floor Amendment No. 35 failed of adoption.

The motion prevailed by the following vote: Yeas 16, Nays 8.

Yeas: Armbrister, Barrientos, Brooks, Ellis, Green, Haley, Johnson, Krier, Lucio, Lyon, Rosson, Tejeda, Truan, Turner, Whitmire, Zaffirini.

Nays: Brown, Harris of Tarrant, Henderson, Leedom, Montford, Parker, Sibley, Sims.

Absent: Bivins, Carriker, Dickson, Glasgow, Harris of Dallas, Moncrief, Ratliff.

Question—Shall Floor Amendment No. 35 be adopted?

Floor Amendment No. 35 was adopted by a viva voce vote.

On motion of Senator Parker and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

SENATE RULE 5.14 SUSPENDED

On motion of Senator Haley and by unanimous consent, Senate Rule 5.14, as it relates to Notice of Intent, was suspended to allow for a 5:00 p.m. deadline for placing bills on the Intent Calendar.

GUEST PRESENTED

The President acknowledged the presence of Governor Ann Richards.

The Senate welcomed Governor Richards.

MESSAGE FROM THE HOUSE

House Chamber
May 24, 1991

HONORABLE BOB BULLOCK
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

The House has concurred in Senate amendments to **H.B. 154** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 507** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 582** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 703** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 725** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 894** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1083** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1298** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1477** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1584** by a non-record vote.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 429**: Gibson, Chair; Black, Robnett, Hartnett, Naishtat.

The House has refused to concur in Senate amendments to **H.B. 734** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. The following have been appointed on the part of the House: Naishtat, Chair; Delco, Linebarger, Taylor, R. Lewis.

The House has refused to concur in Senate amendments to **H.B. 1492** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. The following have been appointed on the part of the House: De La Garza, Chair; Russell, Cook, Place, P. Gallego.

The House has refused to concur in Senate amendments to **H.B. 1770** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. The following have been appointed on the part of the House: Oakley, Chair; Seidlits, Alexander, Hightower, Kuempel.

The House has adopted the Conference Committee Report on **H.B. 2395** by a non-record vote.

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 352**: Cain, Chair; A. Hill, Edwards, Finnell, Berlanga.

Respectfully submitted,

BETTY MURRAY, Chief Clerk
House of Representatives

**VOTE ON ADOPTION OF CONFERENCE COMMITTEE REPORT
ON HOUSE BILL 270 RECONSIDERED**

On motion of Senator Halcy and by unanimous consent, the vote by which the Conference Committee Report on **H.B. 270** was adopted by a viva voce vote was reconsidered.

Question—Shall the Conference Committee Report be adopted?

The Conference Committee Report on **H.B. 270** was again adopted by the following vote: Yeas 31, Nays 0.

**CONFERENCE COMMITTEE REPORT
ON SENATE BILL 460 ADOPTED**

Senator Tejeda called from the President's table the Conference Committee Report on **S.B. 460**. (The Conference Committee Report having been filed with the Senate and read on Wednesday, May 22, 1991.)

On motion of Senator Tejeda, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

SENATE RESOLUTIONS ON FIRST READING

By unanimous consent, the following resolutions were introduced, read first time and referred to the Committee indicated:

S.R. 847 by Lucio State Affairs
Memorializing Congress to honor its commitment to restore previously deferred federal funding for the State Legalization Impact Assistance Grant.

S.R. 849 by Rosson, Truan, Montford Administration
Directing the Subcommittee on Water to conduct an interim study regarding the adequacy of utility service currently being provided in the state.

S.C.R. 157 by Whitmire Economic Development
Urging Congress to fully fund the National Aeronautics and Space Administration's space station Freedom.

HOUSE BILLS AND RESOLUTIONS ON FIRST READING

The following bills and resolutions received from the House were read the first time and referred to the Committee indicated:

H.C.R. 177, To Committee on State Affairs.
H.C.R. 212, To Committee on State Affairs.
H.C.R. 234, To Committee on Administration.
H.C.R. 237, To Committee on Health and Human Services.
H.B. 237, To Committee on Intergovernmental Relations.
H.B. 442, To Committee on Education.
H.B. 642, To Committee on Jurisprudence.
H.B. 1974, To Committee on Natural Resources.

SENATE RULE 11.11 SUSPENDED

On motion of Senator Henderson and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on State Affairs might consider **H.B. 454** today.

SENATE RULE 11.11 SUSPENDED

On motion of Senator Montford and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Finance might consider the following bills today:

H.B. 1629

H.B. 2197

SENATE RULE 11.11 SUSPENDED

On motion of Senator Sims and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Natural Resources might consider **H.B. 2902** today.

SENATE RULE 11.11 SUSPENDED

On motion of Senator Haley and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Administration might consider the following resolutions today:

H.C.R. 91

H.C.R. 180

H.C.R. 7

SENATE RULE 11.11 SUSPENDED

On motion of Senator Haley and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Administration might meet today to consider bills to be placed on the Local and Uncontested Bills Calendar.

SENATE RULE 11.11 SUSPENDED

On motion of Senator Truan and by unanimous consent, Senate Rule 11.11 was suspended in order that the Subcommittee on Water might consider **H.B. 2329** today.

SENATE RULE 11.11 SUSPENDED

On motion of Senator Dickson and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Economic Development might consider the following bills and resolution today:

H.B. 2409

S.R. 844

H.B. 2227

SENATE RULE 11.11 SUSPENDED

On motion of Senator Brooks and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Health and Human Services might consider **H.C.R. 237** today.

SENATE RULE 11.11 SUSPENDED

On motion of Senator Lyon and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Criminal Justice might consider the following bills today:

H.B. 611
H.B. 1715
H.B. 2345
H.B. 2592

SENATE RULE 11.11 SUSPENDED

On motion of Senator Parker and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Education might consider the following bills today:

H.B. 442
H.B. 1829
H.B. 2362
H.B. 2885
H.B. 207

NOTICE OF CONSIDERATION OF NOMINATIONS

Senator Barrientos gave notice that he would tomorrow at the conclusion of Morning Call submit to the Senate for consideration nominations to agencies, boards and commissions of the State.

**NOTICE OF SESSION TO HOLD
LOCAL AND UNCONTESTED BILLS CALENDAR**

Senator Haley announced that a Local and Uncontested Bills Calendar had been placed on the Members' desks and gave notice that a Local and Uncontested Bills Calendar would be held at 9:00 a.m. tomorrow and that all bills would be considered on second reading in the order in which they are listed.

SENATE RULE 11.11 SUSPENDED

On motion of Senator Ellis and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on State Affairs might consider the following resolutions today:

H.C.R. 103
H.C.R. 177

SENATE RULE 11.11 SUSPENDED

On motion of Senator Green and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Jurisprudence might consider the following bills today:

H.B. 2190
H.B. 2486

SENATE RULE 11.11 SUSPENDED

On motion of Senator Green and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Administration might consider H.C.R. 138 today.

SENATE RULE 11.11 SUSPENDED

On motion of Senator Sims and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Administration might consider H.C.R. 153 today.

RECESS

On motion of Senator Brooks, the Senate at 6:30 p.m. took recess until 8:45 p.m. today.

AFTER RECESS

The Senate met at 8:45 p.m. and was called to order by Senator Haley.

MESSAGE FROM THE HOUSE

House Chamber
May 24, 1991

HONORABLE BOB BULLOCK
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

H.B. 189, Relating to the creation of a judicial district composed of Midland County.

Respectfully submitted,
BETTY MURRAY, Chief Clerk
House of Representatives

REPORTS OF STANDING COMMITTEES

By unanimous consent, Senator Haley submitted the following report for the Committee on Administration:

H.C.R. 153
H.C.R. 91
H.C.R. 180
H.C.R. 7
H.C.R. 138
H.C.R. 103

By unanimous consent, Senator Lyon submitted the following report for the Committee on Criminal Justice:

H.B. 1715
H.B. 2345
H.B. 2034 (Amended)

By unanimous consent, Senator Johnson, Acting Chair, submitted the following report for the Committee on Health and Human Services:

H.C.R. 237

By unanimous consent, Senator Parker submitted the following report for the Committee on Education:

H.B. 1829
H.B. 2362

C.S.H.B. 207
C.S.H.B. 2885

By unanimous consent, Senator Dickson submitted the following report for the Committee on Economic Development:

S.R. 844
H.B. 1783
H.B. 1426 (Amended)
C.S.H.B. 1411
C.S.H.B. 2409
C.S.H.B. 2227
H.B. 615
H.B. 2036 (Amended)
H.B. 2185 (Amended)
H.B. 2186 (Amended)
H.B. 2496 (Amended)
H.B. 2048 (Amended)

By unanimous consent, Senator Montford submitted the following report for the Committee on Finance:

H.B. 2197
H.B. 2198
H.B. 2895
H.B. 618
H.B. 1629
H.B. 2111

By unanimous consent, Senator Sims submitted the following report for the Committee on Natural Resources:

H.B. 1023 (Amended)
C.S.H.B. 853
H.B. 2329
H.B. 2884 (Amended)
H.B. 2902

By unanimous consent, Senator Glasgow submitted the following report for the Committee on State Affairs:

H.B. 879 (Amended)
H.B. 2783
H.B. 1637
H.B. 1939
H.B. 260
H.B. 2605
H.B. 1363
H.C.R. 177
H.B. 2269
H.B. 454
H.B. 1756 (Amended)
H.B. 455
C.S.H.B. 2009
H.B. 1719 (Amended)
H.B. 2552 (Amended)
C.S.H.B. 848

By unanimous consent, Senator Green submitted the following report for the Committee on Jurisprudence:

H.B. 2626
H.B. 2052
H.B. 2166 (Amended)
H.B. 2190 (Amended)

MOTION TO RECESS

On motion of Senator Brooks and by unanimous consent, the Senate agreed to recess until 9:00 a.m. tomorrow upon completion of legislative business.

HOUSE BILL ON FIRST READING

The following bill received from the House was read the first time and referred to the Committee indicated:

H.B. 189, To Committee on Jurisprudence.

RECESS

In accordance with a previously adopted motion, the Senate at 9:32 p.m. recessed until 9:00 a.m. tomorrow.

SEVENTY-FIFTH DAY

(Continued)

(Saturday, May 25, 1991)

AFTER RECESS

The Senate met at 9:00 a.m. and was called to order by Senator Haley.

MESSAGE FROM THE HOUSE

House Chamber
May 25, 1991

HONORABLE BOB BULLOCK
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

H.B. 2850, Relating to the civil liability of certain chambers of commerce and to the volunteers and employees of the organizations.

H.J.R. 68, Proposing a constitutional amendment in aid of turnpikes, toll roads, and toll bridges.

H.J.R. 90, Proposing a constitutional amendment authorizing the legislature to prescribe the qualifications of sheriffs.

H.B. 2813, Relating to the County Court at Law of Coryell County.

H.B. 2904, Relating to the jurisdiction of the County Court of Denton County.

H.B. 735, Relating to the levy of county equalization taxes for public schools.

H.B. 743, Relating to the repeal of the disqualification for unemployment compensation benefits based on the receipt of certain social security benefits.

H.B. 1078, Relating to municipal authority over substandard hazardous buildings.

H.B. 1189, Relating to the maximum speed of vehicles on highways.

H.B. 1843, Relating to notification of certain facilities in which a child resides of the filing or modification of a suit affecting the parent-child relationship in which possession of or access to the child is sought.

H.B. 1850, Relating to the taxation of health maintenance organizations.

H.B. 1887, Relating to a prohibition of certain discrimination regarding a claim for unemployment compensation benefits.

H.B. 2029, Relating to the review of placement of a child under the care of the Texas Department of Human Services.

H.B. 2061, Relating to the efficient administration of product development programs.

H.B. 2151, Relating to the preparation of a social study in a suit affecting the parent-child relationship in which an adoption is sought.

H.B. 2243, Relating to the regulation of visitors in the Capitol and on the grounds of the Capitol by the State Preservation Board.

H.B. 2273, Relating to the eligibility for service on the Texas Board of Licensure for Nursing Home Administrators.

H.B. 2373, Relating to certain instruments concerning real property.

H.B. 2376, Relating to amending Article 5.43-2, Texas Insurance Code to provide for the authority of the State Board of Insurance to adopt regulations concerning licensees and regulated equipment.

H.B. 2660, Creating a system of judicial system impact notes to be attached to each bill or resolution that affects the operations of the state's courts.

H.B. 2739, Relating to the creation of the offense of unsolicited facsimile transmission.

H.B. 2152, Relating to the creation, administration, powers, and duties of the Texas public school employees group health insurance program.

S.B. 437, Relating to the compensation of the commissioners of the Nueces County Drainage and Conservation District Number 2.

S.B. 461, Relating to the validation of certain annexations by and a description of the boundaries of the Dallas County Water Control and Improvement District No. 6.

S.B. 513, Relating to the composition of the juvenile board of Houston County.

S.B. 1389, Relating to the membership of the board of trustees of the Canyon Regional Water Authority.

S.B. 1428, Relating to the county courts at law in Angelina County.

S.B. 1578, Relating to the County Court at Law of San Patricio County.

S.B. 1590, Relating to the qualifications for judges of municipal courts of record in Fort Worth.

S.B. 16, Relating to persons convicted of certain offenses under the Texas Controlled Substances Act. (As substituted)

S.B. 33, Relating to commitment procedures and services for persons who are mentally ill or chemically dependent; providing penalties. (As amended)

S.B. 112, Relating to community centers and to the provision of community mental health and mental retardation services. (As substituted)

S.B. 123, Relating to write-in candidacy in certain elections. (As substituted)

S.B. 142, Relating to the persons who serve as high school deputy registrars.

S.B. 218, Relating to the substitution of employment experience as a first-year teacher for the student teaching component of a teacher education program.

S.B. 270, Relating to a surplus in an election services contract fund of a county. (As substituted)

S.B. 291, Relating to the authority of a municipality to control false security alarms.

S.B. 293, Relating to the date on which a taxing unit is required to adopt a tax rate for the current year. (As amended)

S.B. 303, Relating to the imposition of a determinate sentence for children who have engaged in certain delinquent conduct and to the commitment of those children to the Texas Youth Commission.

S.B. 311, Relating to the validation of governmental acts and proceedings by municipalities. (As substituted)

S.B. 334, Relating to the ability of a convicted felon to have a court grant a change of name order. (As amended)

S.B. 355, Relating to the disposition of fees imposed for execution or processing of a warrant or capias. (As amended)

S.B. 364, Relating to a frivolous lawsuit brought against a person who has reported child abuse or participated in a judicial proceeding resulting from a report of child abuse.

S.B. 470, Relating to a prohibition of cigarette or other tobacco product advertising within 1,000 feet of a school or by a mass transit authority. (As substituted)

S.B. 493, Relating to certain regulatory functions under the Texas Radiation Control Act.

S.B. 508, Relating to the authority of the Texas Department of Health to regulate the disinterment of dead bodies.

S.B. 587, Relating to performance standards for certain plumbing fixtures and related labeling requirements for certain plumbing fixtures and appliances; providing criminal, civil, and administrative penalties. (As amended)

S.B. 592, Relating to the authority of certain home-rule cities to make contracts for the enforcement of certain arrest warrants.

S.B. 610, Relating to the Texas Employment Commission's state child care resource clearinghouse and Work and Family Policies Advisory Committee. (As substituted)

S.B. 625, Relating to the contents of an official voter registration application form. (As substituted)

S.B. 642, Relating to indexing of birth and death records maintained by the Texas Department of Health and to the provision of death information to county clerks and the Texas Veterans Commission.

S.B. 658, Relating to an increase of student center complex fees at institutions within The Texas A&M University System.

S.B. 669, Relating to the exemption of certain students from certain academic skills testing and remedial coursework requirements.

S.B. 693, Relating to the procurement of professional services by the Texas Department of Health.

S.B. 700, Relating to the sale, exchange, grant, or other conveyance of state-owned land.

S.B. 746, Relating to the authority of the Parks and Wildlife Department to search for and inspect wildlife resources.

S.B. 769, Relating to acquisition of certain postal service information for use by the secretary of state in maintaining a statewide voter registration file.

S.B. 791, Relating to the authority of a sheriff to require certain defendants convicted of felonies and awaiting transfer to the institutional division of the Texas Department of Criminal Justice to participate in work programs operated by the sheriff.

S.B. 797, Relating to the production, marketing, and distribution of state travel materials.

S.B. 856, Relating to the use of scrap tires by political subdivisions for road construction or repair. (As substituted)

S.B. 857, Relating to the regulation of the practice of chiropractic.

S.B. 873, Relating to the regulation of the manufacture and sale of foods, drugs, devices and declaring an emergency. (As amended)

S.B. 911, Relating to the preparation of an annual report on the availability of substance abuse treatment and prevention services to participants in the criminal justice system.

S.B. 923, Relating to the liability of a person for demolishing, causing to be demolished, or adversely affecting a historic structure without a permit. (As substituted and amended)

S.B. 933, Relating to the purchase of library books and materials for libraries at institutions of higher education.

S.B. 945, Relating to the maintenance and construction of state highways by counties.

S.B. 952, Relating to decedents' estates.

S.B. 954, Relating to eligibility for a beginning position with a fire department in certain cities.

S.B. 958, Relating to procedures for the establishment of the parent-child relationship. (As amended)

S.B. 967, Relating to requirements that certain actions involving an insurance corporation and a resident of this state be brought in the courts of this state.

S.B. 977, Relating to the further development of the fish farming industry, including the licensing of vehicles used in fish farming operations, licenses required for selling fish, and the availability of water used in fish farming. (As substituted)

S.B. 978, Relating to bonds or notes issued by a community center. (As amended)

S.B. 997, Relating to notice to a purchaser of real property in a water district.

S.B. 1004, Relating to duties of the State auditor and to property and financial audits and reports of the State and certain units of local government. (As amended)

S.B. 1041, Relating to the correction of the ad valorem tax roll.

S.B. 1042, Relating to the right of redemption of property sold for taxes.

S.B. 1048, Relating to the payment by counties for trial transcripts in cases involving indigents. (As amended)

S.B. 1049, Relating to the regulation of metered electric utility service provided by recreational vehicle park owners.

S.B. 1083, Relating to the presence of a court reporter during the testimony of children in designated cases using closed circuit television.

S.B. 1095, Relating to the enactment of new laws and the repeal or amendment of existing laws for the effective and efficient operation of the uniform statewide accounting system. (As substituted)

S.B. 1105, Relating to a reduced oil production tax rate for oil from certain enhanced recovery projects.

S.B. 1106, Relating to the leasing, development and management of minerals owned by the state. (As substituted)

S.B. 1115, Relating to disciplinary action against a nursing home administrator.

S.B. 1123, Relating to the regulation of dispensing opticians; providing a civil and criminal penalty. (As substituted and amended)

S.B. 1127, Relating to the sale of real property that is owned by a county.

S.B. 1129, Relating to the provision of emergency medical services; providing a criminal penalty. (As amended)

S.B. 1165, Relating to the furnishing of lists containing the names of registered voters of political subdivisions situated in certain counties; providing a criminal penalty.

S.B. 1175, Relating to access to criminal history information records on certain court-appointed special advocates for children.

S.B. 1186, Relating to absentee voting terminology.

S.B. 1203, Relating to restroom facilities in places where the public congregates. (As amended)

S.B. 1217, Relating to the control of exotic animals as depredating animals. (As substituted)

S.B. 1230, Relating to the detention of certain children taken into custody under Title 3, Family Code. (As amended)

S.B. 1245, Relating to rate regulation of medical professional liability insurance. (As substituted)

S.B. 1246, Relating to state indemnification of, and liability insurance premiums for, certain health care claims.

S.B. 1247, Relating to State Board of Insurance authority to regulate certain health care liability self-insurance trusts.

S.B. 1249, Relating to services for the aged and disabled.

S.B. 1280, Relating to termination of executory contracts for the sale of real property.

S.B. 1302, Relating to the practice of podiatry.

S.B. 1314, Relating to the appointment of criminal law magistrates for the district courts of Travis County. (As amended)

S.B. 1333, Relating to the transfer of certain suits affecting the parent-child relationship and court-ordered and administrative withholding from earnings to enforce child support orders. (As amended)

S.B. 1337, Relating to the authority of state agencies to purchase service and achievement awards for volunteers.

S.B. 1341, Relating to the regulation of persons engaged in removing asbestos from public buildings or disturbing, encapsulating, or enclosing that asbestos; providing penalties. (As amended)

S.B. 1358, Relating to petty cash accounts for certain governmental units.

S.B. 1360, Relating to the use of bond proceeds received by an issuer.

S.B. 1369, Relating to changes to the State Cooperation in Local Purchasing Programs.

S.B. 1397, Relating to fees charged for fire inspections in counties. (As substituted)

S.B. 1415, Relating to admissibility of statements made by a child in an administrative hearing and in the judicial review of the administrative hearing.

S.B. 1451, Relating to the incorporation of and membership of hospitals and a hospital council or related subgroup in a cooperative association.

S.B. 1456, Relating to the renewal by the State Board of Insurance of a license, certificate, or other authorization to perform an activity regulated under the insurance laws of this state that is held by certain persons on active duty in the United States armed forces.

S.B. 1480, Relating to a medical services fee at the University of North Texas. (As amended)

S.B. 1481, Relating to the selection of courts of appeals in criminal cases appealed from a trial court in Hopkins County.

S.B. 1490, Relating to the regulation by the State Board of Insurance of fire protection devices and systems and their installation and monitoring. (As substituted and amended)

S.B. 1497, Relating to the licensing and regulation of pharmacists and pharmacies; providing a criminal penalty.

S.B. 1508, Relating to county health and accident coverage through a risk pool.

S.B. 1509, Relating to the authority of a domestic relations office to obtain certain records from the Department of Public Safety and the Texas Employment Commission; providing a penalty.

S.B. 1517, Relating to requiring immunization of certain students and access to certain records in case of an emergency or epidemic.

S.B. 1520, Relating to the regulation of an employer of certain temporary common workers; providing penalties. (As amended)

S.B. 1538, Relating to the regulation of certain business relations. (As amended)

S.B. 1543, Relating to flood prevention and control; making appropriations. (As amended)

S.B. 1550, Related to required meetings of the Operation Game Thief Committee.

Respectfully submitted,

BETTY MURRAY, Chief Clerk
House of Representatives

BILLS AND RESOLUTIONS SIGNED

The Presiding Officer announced the signing in the presence of the Senate, after the captions had been read, the following enrolled bills and resolutions:

S.B. 984
S.B. 478
S.B. 81
S.B. 4
S.C.R. 151
S.C.R. 147
S.C.R. 145
S.B. 52 (Signed subject to Art. III,
Sec. 49a of the Constitution)
S.C.R. 123
S.C.R. 93
S.C.R. 47

LOCAL AND UNCONTESTED BILLS CALENDAR

The Presiding Officer (Senator Haley in Chair) announced that the time had arrived for consideration of the Local and Uncontested Bills Calendar.

Pursuant to Senate Rule 9.03(d), the following bills were laid before the Senate, read second time, amended where applicable, passed to engrossment/third reading, read third time and passed: (Vote on Constitutional Three-Day Rule and final passage indicated after the caption of each bill.)

C.S.S.B. 1600 (Armbrister) Relating to the powers and duties of the Bastrop County Water Control and Improvement District No. 2 relating to the administration of a road utility district in Bastrop County. (31-0) (31-0)

H.B. 84 (Glasgow) Relating to the authority of a general-law municipality to annex adjacent streets, highways, and other ways and to the validation of certain municipal annexations. (31-0) (31-0)

H.B. 268 (Brown) Relating to the manufacture, delivery, possession, or use of a substance or device designed to falsify drug test results; providing criminal penalties. (31-0) (31-0)

H.B. 399 (Lyon) Relating to the operation of an authorized emergency vehicle by a volunteer fire fighter. (31-0) (31-0)

H.B. 521 (Sims) Relating to the reimbursement for travel and living expenses of certain witnesses in criminal cases. (31-0) (31-0)

H.B. 595 (Zaffirini) Relating to the impoundment of certain motor vehicles on failure to furnish evidence of financial responsibility after an accident. (31-0) (31-0)

H.B. 662 (Ellis) Relating to reporting requirements to receive funding from the Texas Commission on Alcohol and Drug Abuse. (31-0) (31-0)

H.B. 784 (Green) Relating to the eligibility of certain product demonstrators for unemployment compensation benefits. (31-0) (31-0)

Senator Green offered the following committee amendment to the bill:

Amend **H.B. 784** as follows:

(1) On page 2, lines 3-4 in Section 1, strike "(ii) the contract provides that the individual:" and add in lieu thereof: "(ii) both in contract and in fact the individual:".

The committee amendment was read and was adopted by a viva voce vote.

On motion of Senator Green and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

H.B. 851 (Glasgow) Relating to financing of certain rural transportation systems. (31-0) (31-0)

C.S.H.B. 962 (Tejeda) Relating to safety requirements for outdoor shooting ranges; providing penalties. (31-0) (31-0)

H.B. 1057 (Armbrister) Relating to the approval of spending by certain county commissioners. (31-0) (31-0)

H.B. 1065 (Bivins) Relating to the authority of a county to regulate the use of fireworks in certain climatic conditions; providing a penalty. (31-0) (31-0)

H.B. 1132 (Glasgow) Relating to confidentiality of conversations when one of the parties is hearing impaired. (31-0) (31-0)

H.B. 1289 (Green) Relating to the personnel records of the employees of certain sheriff's departments. (31-0) (31-0)

H.B. 1314 (Barrientos) Relating to grade level retention of public school students. (31-0) (31-0)

Senator Barrientos offered the following committee amendment to the bill:

Amend **H.B. 1314** by adding two sections, appropriately numbered, to read as follows and by renumbering subsequent sections appropriately:

SECTION _____. Section 21.555, Education Code, is amended by adding Subsection (c) to read as follows:

(c) The board shall adopt rules under which a dyslexic student who is not exempt under this section may utilize procedures including, but not limited to, oral examinations where appropriate and the time and the materials or technology necessary for the student to demonstrate the student's mastery of the competencies the assessment instruments are designed to measure.

SECTION _____. Section 51.306, Education Code, is amended by adding Subsection (m) to read as follows:

(m) The board shall adopt rules under which a dyslexic student may utilize the time and the materials or technology necessary for the student to demonstrate the student's skill level.

The committee amendment was read and was adopted by a viva voce vote.

On motion of Senator Barrientos and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

H.B. 1328 (Whitmire) Relating to the authority of a county with a fiscal year beginning October 1 to borrow money against anticipated revenue. (31-0) (31-0)

H.B. 1345 (Whitmire) Relating to the manner in which relationships by consanguinity or affinity are determined. (31-0) (31-0)

H.B. 1412 (Montford) Relating to the temporary licensing of certain physicians employed by the Texas Department of Mental Health and Mental Retardation. (31-0) (31-0)

H.B. 1414 (Sims) Relating to the authority of certain counties to impose a county hotel occupancy tax. (31-0) (31-0)

H.B. 1436 (Henderson) Relating to the microfilming of local government records by the Texas State Library and Archives Commission. (31-0) (31-0)

H.B. 1469 (Glasgow) Relating to the preparation of a jury list in a criminal case. (31-0) (31-0)

H.B. 1489 (Ratliff) Relating to the dissolution of the Morris County Hospital District and to the disposition of the district's assets and liabilities on dissolution. (31-0) (31-0)

H.B. 1563 (Krier) Relating to protective orders against family violence. (31-0) (31-0)

Senator Krier offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **H.B. 1563** as follows:

(1) Add a new SECTION 7 to read as follows:

SECTION 7. Article 14.03, Code of Criminal Procedure, is amended to read as follows:

Art. 14.03. AUTHORITY OF PEACE OFFICERS. (a) Any peace officer may arrest, without warrant:

(1) persons found in suspicious places and under circumstances which reasonably show that such persons have been guilty of some felony or breach of the peace, or threaten, or are about to commit some offense against the laws;

(2) persons who the peace officer has probable cause to believe have committed an assault resulting in bodily injury to another person and the peace officer has probable cause to believe that there is danger of further bodily injury to that person;

(3) persons who the peace officer has probable cause to believe have committed the offense defined by Section 25.08, Penal Code (violation of Protective [Court] Order), if [whether or not] the offense is not committed in the presence of the peace officer; or

(4) persons who the peace officer has probable cause to believe have committed an assault resulting in bodily injury to a member of the person's family or household.

(b) A peace officer shall arrest, without a warrant, a person the peace officer has probable cause to believe has committed an offense under Section 25.08, Penal Code (violation of Protective Order), if the offense is committed in the presence of the peace officer.

(c) If reasonably necessary to verify an allegation of a violation of a protective order or of the commission of an assault against a member of the family or household, a peace officer shall remain at the scene of the investigation to verify the allegation and to prevent the further commission of family violence.

(d) [(c)] A peace officer who is outside his jurisdiction may arrest, without warrant, a person who commits an offense within the officer's presence or view, if the offense is a felony or a violation of Title 9, Chapter 42, Penal Code. A peace officer making an arrest under this subsection shall, as soon as practicable after making the arrest, notify a law enforcement agency having jurisdiction where the arrest was made. The law enforcement agency shall then take custody of the person committing the offense and take the person before a magistrate in compliance with Article 14.06 of this code.

(e) [(d)] The justification for conduct provided under Section 9.21, Penal Code, applies to a peace officer when the peace officer is performing a duty required by this article.

(f) [(e)] In this article, "family," "household," and "member of a household" have the meanings assigned to those terms by Section 71.01, Family Code.

(2) Renumber the subsequent sections of the bill appropriately.

The committee amendment was read and was adopted by a viva voce vote.

Senator Krier offered the following committee amendment to the bill:

Committee Amendment No. 2

Amend H.B. 1563 as follows:

(1) After SECTION 2 of the bill, insert the following:

SECTION 3. Section 71.05, Family Code, is amended by amending Subsection (a) and adding subsections (f) and (g) to read as follows:

(a) An application must state:

(1) the name and county of residence of each applicant and the name, address, and county of residence of each individual alleged to have committed family violence;

(2) ~~the facts and circumstances concerning the alleged family violence;~~

[(3)] the relationships between the applicants and the individuals alleged to have committed family violence; and

(3) [(4)] a request for one or more protective orders.

(f) If an application requests a protective order and alleges that the respondent has violated a former protective order protecting the applicant by committing an act prohibited by the former order under Section 71.11(b) of this code and that the former protective order has expired since the alleged violation occurred, the application for the protective order must include:

(1) a copy of the former protective order attached to the application or a statement that the order is unavailable to the applicant and that a copy of the order will be filed with the court before the hearing on the application;

(2) a description of the violation of the former protective order; and

(3) a statement that the violation of the former order described in the application has not been grounds for any other order protecting the applicant that has been issued or requested under this section.

(g) The procedural requirements relating to a protective order under this chapter, including the application under Section 71.04 of this code and service under Section 71.07 of this code, apply to a protective order under Subsection (f) of this section.

(2) After SECTION 4 of the bill, insert the following:

SECTION 6. Section 71.10, Family Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) If the court finds that a person violated a former protective order made under this chapter by committing an act prohibited by the former order under Section 71.11(b) of this code while the former order was in effect and that the former order is not currently in effect, the court, without finding whether family violence has occurred or whether family violence is likely to occur in the foreseeable future, shall issue a protective order that is in the best interest of the family or household or a member of the family or household.

(d) A protective order may apply only to a party to the proceeding who:

(1) the court finds has committed family violence and is likely to commit family violence in the foreseeable future;

(2) the court finds has violated a former protective order;

(3) has agreed to the order under Section 71.12(a) of this code; or

(4) [is] is a respondent and has agreed to the order under Section 71.12(b) of this code.

(3) Strike SECTION 7 of the bill and substitute the following:

SECTION 9. (a) This Act takes effect September 1, 1991, and applies only to an application for a protective order under Chapter 71, Family Code, or Section 3.581, Family Code, made on or after the effective date of this Act. An application for a protective order under Chapter 71, Family Code, or Section 3.581, Family Code, made before the effective date of this Act is governed by the law in effect at the time the application was made, and that law is continued in effect for that purpose.

(b) This Act applies to an action for a protective order under Chapter 71, Family Code, or Section 3.581, Family Code, alleging a violation of a former protective order, without regard to whether the former protective order alleged to have been violated was entered before, on, or after the effective date of this Act.

(4) Renumber the sections of the bill accordingly.

The committee amendment was read and was adopted by a viva voce vote.

On motion of Senator Krier and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

C.S.H.B. 1621 (Brooks) Relating to tests for lead poisoning conducted by the Texas Department of Health. (31-0) (31-0)

H.B. 1627 (Brown) Relating to a performance bond required of county contractors. (31-0) (31-0)

H.B. 1648 (Sims) Relating to the licensing of water well pump installers; providing a penalty. (31-0) (31-0)

H.B. 1652 (Krier) Relating to medical, dental, or health services provided to indigent prisoners in county jails. (31-0) (31-0)

Senator Krier offered the following committee amendment to the bill:

Amend **H.B. 1652** by adding a new SECTION 2 to the bill to read as follows and by renumbering the existing SECTION 2 of the bill as SECTION 3:

"SECTION 2. The change in law made by this Act does not impose a duty on the institutional division of the Texas Department of Criminal Justice in regards to the provision of health care to inmates confined in county jails or to payment of costs for the provision of that care."

The committee amendment was read and was adopted by a viva voce vote.

On motion of Senator Krier and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

H.B. 1682 (Brooks) Relating to training programs for persons employed in the food service industry. (31-0) (31-0)

H.B. 1688 (Dickson) Relating to child support records and orders. (31-0) (31-0)

H.B. 1739 (Sibley) Relating to temporary vehicle registration. (31-0) (31-0)

H.B. 1761 (Armbrister) Relating to excluding land from the Fayette County Water Control and Improvement District-Monument Hill. (31-0) (31-0)

H.B. 1762 (Armbrister) Relating to state liability for indemnification of certain persons signing an industrial solid or hazardous waste manifest or similar record. (31-0) (31-0)

H.B. 1766 (Whitmire) Relating to the cancellation of a permit to sell prepaid funeral services or merchandise. (31-0) (31-0)

H.B. 1767 (Whitmire) Relating to the retention of business records. (31-0) (31-0)

H.B. 1900 (Sims) Relating to changing the name of the Brewster County Hospital District to the Big Bend Regional Hospital District and authorizing the combination of the Presidio County Hospital District with that district. (31-0) (31-0)

H.B. 1901 (Sims) Relating to governmental liability for the acts of certain contractors used by certain hospital districts. (31-0) (31-0)

H.B. 2059 (Brooks) Relating to restraining a parent from absconding with a child who is alleged to have been abused. (31-0) (31-0)

H.B. 2066 (Brooks) Relating to certain fees assessed to fund the operations of the boiler inspection section of the Texas Department of Licensing and Regulation. (31-0) (31-0)

H.B. 2426 (Armbrister, on behalf of Haley) Relating to legal defense of indigent inmates. (31-0) (31-0)

H.B. 2505 (Glasgow) Relating to the regulation of liquefied petroleum gas. (31-0) (31-0)

H.B. 2719 (Sims) Relating to the terms of the 83rd District Court. (31-0) (31-0)

Senator Sims offered the following committee amendment to the bill:

Amend **H.B. 2719** by adding a new SECTION 2 to read as follows and renumber the remaining sections.

SECTION 2. Section 24.110(c), Government Code is amended to read as follows:

(c) The terms of the Second 9th District Court begin:

(1) in Montgomery County on the first Tuesday in January and ends on the last Tuesday in June and reconvenes on the first Tuesday in July and ends on the last Tuesday in December.

(2) in Polk County on the first Thursday in January and ends on the last Thursday in June and reconvenes on the first Thursday in July and ends on the last Thursday in December.

(3) in San Jacinto County on the first Wednesday in January and ends on the last Wednesday in June and reconvenes on the first Wednesday in July and ends on the last Wednesday in December.

(4) in Trinity County on the first Monday in January and ends on the last Monday in June and reconvenes on the first Monday in July and ends on the last Monday in December.

The committee amendment was read and was adopted by a viva voce vote.

On motion of Senator Sims and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

C.S.H.B. 2876 (Barrientos) Relating to the authority of municipal utility districts. (31-0) (31-0)

MEMORIAL RESOLUTION

H.C.R. 216 - (Brooks): In memory of Donald Ferrell of Texas City.

CONGRATULATORY RESOLUTIONS

H.C.R. 168 - (Harris of Dallas): Commending Mr. George Bayoud, Jr., for his service to the State of Texas.

H.C.R. 207 - (Sims): Expressing appreciation to The Chevron Companies for their invaluable support of Speaker's Day.

H.C.R. 210 - (Sims): Honoring Hallie Stillwell for her extraordinary accomplishments and for her many significant contributions to the State of Texas.

H.C.R. 217 - (Leedom): Extending congratulations to Richland College for its 20 years of service to the community.

H.C.R. 219 - (Moncrief): Designating December 15, 1991, as Bill of Rights Day.

H.C.R. 233 - (Moncrief): Designating the week of July 21-28, 1991, as Southern States Corrections Week in Texas.

S.C.R. 154 - By Lyon: Welcoming the 1994 World Cup to Texas.

S.C.R. 155 - By Ratliff: Commending D. Jerrell Huffman of Longview on the occasion of his retirement after 42 years of distinguished service with Southwestern Electric Power Company.

S.C.R. 156 - By Ratliff: Recognizing Ben F. Bane of Marshall on the occasion of his retirement as District Office Supervisor for Swepco.

S.C.R. 161 - By Barrientos: Designating June 22, 1991, as "Texas Songwriters Day" in honor and recognition of their artistic vision.

S.R. 842 - By Brooks: Recognizing Captain Harry L. Coker for the outstanding job he performed in the ports of Galveston and Texas City.

S.R. 845 - By Bivins: Recognizing Mark Ernest Bivins and Ellen Dorsey Smith on the joyful occasion of their marriage, Saturday, May 25, 1991.

S.R. 846 - By Glasgow: Recognizing Doctor of the Day, Ty Gore, M.D., of Mineral Wells and expressing gratitude for his invaluable services to the Senate.

S.R. 848 - By Lucio: Honoring Harry H. Whipple of Los Fresnos for his many years of exemplary involvement in the life of his community.

S.R. 850 - By Rosson: Extending congratulations to Radford School of El Paso on the occasion of its 80th birthday.

S.R. 851 - By Krier: Joining with the San Antonio Hispanic Chamber of Commerce in honoring George and David Cortez of the well-known restaurateur Cortez family.

S.R. 852 - By Brown: Recognizing Jennifer Brown of Brazoswood for her exceptional accomplishments as a member of the Brazoswood High School girls basketball team.

S.R. 853 - By Brown: Recognizing Paula Walker for her selection as the Brazosport Independent School District Teacher of the Year.

S.R. 855 - By Haley: Extending congratulations to the Jasper High School Boys Powerlifting Team which won the state championship at the Texas High School Powerlifting Association State Meet in College Station.

S.R. 856 - By Lyon: Honoring Marty Walker for receiving an Honorable Mention designation from the Texas Committee for the Humanities in 1991 for outstanding teaching.

S.R. 857 - By Lyon: Honoring Sue E. Platzer for receiving an Honorable Mention designation from the Texas Committee for the Humanities in 1991 for outstanding teaching.

S.R. 858 - By Barrientos: Extending congratulations to the staff of the Center for Initiatives in Education at Southwest Texas State University on Project Excel.

S.R. 859 - By Turner: Extending congratulations to Bette Nelson, recently selected by the Huntsville Business and Professional Women's organization as the 1991 "Woman of the Year."

CONCLUSION OF SESSION FOR LOCAL AND UNCONTESTED BILLS CALENDAR

The Presiding Officer (Senator Haley in Chair) announced that the session for the consideration of the Local and Uncontested Bills Calendar was concluded.

ADJOURNMENT

On motion of Senator Brooks, the Senate at 9:19 a.m. adjourned until 10:30 a.m. today.

APPENDIX

Filed with Secretary of State
(May 24, 1991)

S.J.R. 11

S.J.R. 39

Sent to Governor
(May 24, 1991)

S.C.R. 117
S.C.R. 143
S.C.R. 144
S.C.R. 148
S.C.R. 153
S.B. 616
S.B. 788
S.B. 892
S.B. 946
S.B. 1189
S.B. 1234
S.B. 1511
S.B. 1533
S.B. 186
S.B. 191
S.B. 324
S.B. 325
S.B. 330
S.B. 479
S.B. 514
S.B. 544
S.B. 553
S.B. 663
S.B. 670
S.B. 695
S.B. 737
S.B. 774
S.B. 783
S.B. 793
S.B. 798
S.B. 853
S.B. 951
S.B. 972
S.B. 1037
S.B. 1053
S.B. 1059
S.B. 1222
S.B. 1261
S.B. 1262
S.B. 1274
S.B. 1283
S.B. 1335
S.B. 1342
S.B. 1401
S.B. 1457
S.B. 1484
S.B. 1491
S.B. 1108 (Signed subject to Art. III,
Sec. 49a of the Constitution)